

MONTANA LEGISLATIVE HISTORY

Chapter 448 ~~19~~ 2005

Bill H _____ S _____ Original bill & history ☒ c

H. Committee on Business & Labor

Hearing Date(s) 3-10 _____ c

3-11 _____ c

H. Appropriations 4-4 _____ c

4-8 _____ c

Date Out 4-8 _____ c

S. Committee on Business & Labor

Hearing Date(s) 1-11 _____ c

1-20 _____ c

S. Finance & Claims 2-9 _____ c

_____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

3/14	3RD READING CONCURRED	98	1
	RETURNED TO SENATE		
3/15	SENT TO ENROLLING		
3/15	RETURNED FROM ENROLLING		
3/16	SIGNED BY PRESIDENT		
3/16	SIGNED BY SPEAKER		
3/17	TRANSMITTED TO GOVERNOR		
3/24	SIGNED BY GOVERNOR		
3/24	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 121		
	EFFECTIVE DATE: 7/01/2005 - ALL SECTIONS		

SB 107 INTRODUCED BY F. SMITH

LC0200 DRAFTER: LEE EVANS

CLARIFY CONDITIONS REQUIRING AGRICULTURAL CHEMICAL GROUNDWATER
MANAGEMENT PLANS

BY REQUEST OF DEPARTMENT OF AGRICULTURE

12/20	INTRODUCED		
12/29	REFERRED TO AGRICULTURE, LIVESTOCK AND IRRIGATION		
1/05	HEARING		
1/10	COMMITTEE EXECUTIVE ACTION—BILL PASSED	6	0
1/10	COMMITTEE REPORT—BILL PASSED		
1/11	2ND READING PASSED	38	12
1/12	3RD READING PASSED	36	13
	TRANSMITTED TO HOUSE		
1/24	FISCAL NOTE REQUESTED		
1/31	FISCAL NOTE RECEIVED		
1/31	FISCAL NOTE SIGNED		
1/31	FISCAL NOTE PRINTED		
3/01	REFERRED TO NATURAL RESOURCES		
3/09	HEARING		
3/17	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED	18	0
3/18	COMMITTEE REPORT—BILL CONCURRED		
4/04	2ND READING CONCURRED AS AMENDED	53	47
4/06	3RD READING CONCURRED	84	16
	RETURNED TO SENATE WITH AMENDMENTS		
4/08	2ND READING HOUSE AMENDMENTS NOT CONCURRED ON VOICE VOTE	50	0
4/09	CONFERENCE COMMITTEE APPOINTED		
4/11	CONFERENCE COMMITTEE APPOINTED		
4/14	HEARING		
4/14	CONFERENCE COMMITTEE DISSOLVED		
4/14	FREE CONFERENCE COMMITTEE APPOINTED		
4/15	HEARING		
4/15	FREE CONFERENCE COMMITTEE REPORT RECEIVED		
4/15	FREE CONFERENCE COMMITTEE REPORT RECEIVED		
4/16	2ND READING FREE CONFERENCE COMMITTEE REPORT ADOPTED ON VOICE VOTE	49	1
4/18	3RD READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	41	9
4/18	2ND READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	96	1
4/18	3RD READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	97	2
4/19	SENT TO ENROLLING		
4/22	RETURNED FROM ENROLLING		
4/25	SIGNED BY PRESIDENT		
4/25	SIGNED BY SPEAKER		
4/25	TRANSMITTED TO GOVERNOR		
5/02	SIGNED BY GOVERNOR		
5/03	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 561		
	EFFECTIVE DATE: 5/02/2005 - ALL SECTIONS		

SB 108 INTRODUCED BY LEWIS

LC0358 DRAFTER: MURDO

REVISE LAWS GOVERNING INDEPENDENT CONTRACTORS

BY REQUEST OF ECONOMIC AFFAIRS INTERIM COMMITTEE

12/20	INTRODUCED		
12/27	FISCAL NOTE REQUESTED		
12/29	REFERRED TO BUSINESS, LABOR, AND ECONOMIC AFFAIRS		
1/11	FISCAL NOTE RECEIVED		
1/11	FISCAL NOTE SIGNED		
1/11	HEARING		

SENATE BILLS

57

1/12	FISCAL NOTE PRINTED		
1/21	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	11	0
1/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/24	2ND READING PASSED ON VOICE VOTE	47	2
1/24	SEGREGATED FROM COMMITTEE OF THE WHOLE REPORT	50	0
1/24	TAKEN FROM 2ND READING; REREFERRED TO FINANCE AND CLAIMS	50	0
2/08	REVISED FISCAL NOTE RECEIVED		
2/08	REVISED FISCAL NOTE SIGNED		
2/08	REVISED FISCAL NOTE PRINTED		
2/09	HEARING		
2/10	COMMITTEE EXECUTIVE ACTION—BILL PASSED	17	2
2/10	COMMITTEE REPORT—BILL PASSED		
2/11	3RD READING PASSED	47	2
2/11	RECONSIDERED PREVIOUS ACTION; REMAINS IN 3RD READING PROCESS		
2/11	TAKEN FROM 3RD READING; PLACED ON 2ND READING		
2/12	2ND READING PASSED ON VOICE VOTE	47	2
2/14	3RD READING PASSED	45	5
	TRANSMITTED TO HOUSE		
3/01	REFERRED TO BUSINESS AND LABOR		
3/10	HEARING		
3/11	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED	18	0
3/11	COMMITTEE REPORT—BILL CONCURRED		
3/19	2ND READING CONCURRED	86	14
3/19	REREFERRED TO APPROPRIATIONS		
4/04	HEARING		
4/09	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED	19	1
4/09	COMMITTEE REPORT—BILL CONCURRED		
4/12	2ND READING CONCURRED	99	0
4/13	3RD READING CONCURRED	98	1
	RETURNED TO SENATE		
4/14	SENT TO ENROLLING		
4/16	RETURNED FROM ENROLLING		
4/16	SIGNED BY PRESIDENT		
4/18	SIGNED BY SPEAKER		
4/18	TRANSMITTED TO GOVERNOR		
4/28	SIGNED BY GOVERNOR		
4/28	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 448		
	EFFECTIVE DATE: 4/28/2005 - ALL SECTIONS		

SB 109 INTRODUCED BY COBB

LC0533 DRAFTER: BOHYER

REQUIRE STATE AGENCIES TO DEVELOP STRATEGIC PLANS, PERFORMANCE MEASURES

10/25	FISCAL NOTE NEEDED		
12/20	INTRODUCED		
12/27	FISCAL NOTE REQUESTED		
12/29	REFERRED TO STATE ADMINISTRATION		
1/12	HEARING		
1/14	FISCAL NOTE RECEIVED		
1/17	FISCAL NOTE PRINTED		
1/18	SPONSOR FISCAL NOTE RECEIVED		
1/24	COMMITTEE EXECUTIVE ACTION—BILL PASSED	6	3
1/24	COMMITTEE REPORT—BILL PASSED		
1/26	TAKEN FROM 2ND READING; REREFERRED TO STATE ADMINISTRATION	50	0
1/28	COMMITTEE EXECUTIVE ACTION—BILL PASSED	9	2
1/28	COMMITTEE REPORT—BILL PASSED		
1/31	2ND READING PASSED ON VOICE VOTE	50	0
1/31	SEGREGATED FROM COMMITTEE OF THE WHOLE REPORT	50	0
1/31	TAKEN FROM 2ND READING; REREFERRED TO FINANCE AND CLAIMS	50	0
3/09	HEARING		
3/10	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	19	0
3/10	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/11	2ND READING PASSED ON VOICE VOTE	50	0
3/12	3RD READING PASSED	48	0
	TRANSMITTED TO HOUSE		
3/14	REFERRED TO STATE ADMINISTRATION		
3/31	HEARING		
4/01	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED	16	0
4/01	COMMITTEE REPORT—BILL CONCURRED		
4/07	2ND READING CONCURRED	95	5
4/08	3RD READING CONCURRED	91	6

SENATE BILL NO. 108

INTRODUCED BY D. LEWIS

BY REQUEST OF THE ECONOMIC AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING REQUIREMENTS FOR CERTIFICATION OF INDEPENDENT CONTRACTORS; PROVIDING A CONCLUSIVE PRESUMPTION THAT AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE VERIFIES AN INDEPENDENT CONTRACTOR'S STATUS FOR PURPOSES OF WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS; PROVIDING AUTHORITY TO SUSPEND OR REVOKE CERTIFICATION; SPECIFYING VIOLATIONS AND A PENALTY; CLARIFYING THE DEFINITION OF "INDEPENDENT CONTRACTOR"; DECLARING LEGISLATIVE INTENT FOR A CONCLUSIVE PRESUMPTION REGARDING AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE; ALLOWING AN INDEPENDENT CONTRACTOR TO OPT OUT OF WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS; PROVIDING AN EXEMPTION TO THE GENERAL PROHIBITION AGAINST A WAIVER OF STATUTES; REVISING THE DISPUTE APPEAL PERIOD AND PROCESS; REPEALING A REQUIREMENT TO REPORT TO THE STATE COMPENSATION INSURANCE FUND; AMENDING SECTIONS 15-30-201, 39-8-102, 39-51-201, 39-51-204, 39-71-105, 39-71-117, 39-71-401, 39-71-409, 39-71-415, AND 39-72-102, MCA; REPEALING SECTIONS 39-51-604 AND 39-71-120, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, the Montana Supreme Court ruled in *Wild v. Fregein Construction*, 2003 MT 115, 315 Mont. 425, 68 P.3d 855, that the independent contractor exemption certificate does not raise a conclusive presumption as to the status of a person as an independent contractor; and

WHEREAS, the Montana Supreme Court in the *Wild* decision ruled that it is against the public policy of the state for an employer to pay an independent contractor at a rate higher than the employer pays employees; and

WHEREAS, the Montana Supreme Court in the *Wild* decision identified that a person does not have an independent business if the person performs work for only one entity; and

WHEREAS, the *Wild* decision created a great deal of uncertainty in matters involving independent contractors and employees in the business community; and

WHEREAS, the Montana Legislature considers enacting legislation appropriate to effectively reverse

1 the Wild decision and to restore the conclusive presumption of an independent contractor exemption certificate
2 as well as to allow employers to pay persons with the independent contractor exemption certificate at a rate
3 higher than the rate paid to employees and additionally to allow a person with an independent contractor
4 exemption certificate to work for only one employing unit without becoming an employee as well as to waive the
5 benefits of the workers' compensation and occupational disease laws.

6
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8
9 NEW SECTION. **Section 1. Independent contractor certification.** (1) (a) A person who regularly
10 performs services at a location other than the person's own fixed business location shall apply to the department
11 for an independent contractor exemption certificate.

12 (b) A person who meets the requirements of this section and receives an independent contractor
13 exemption certificate is not required to obtain a personal workers' compensation insurance policy.

14 (c) For the purposes of this section, "person" means a sole proprietor, a working member of a
15 partnership, a working member of a limited liability partnership, or a working member of a member-managed
16 limited liability company.

17 (2) The department shall adopt rules relating to an original application for or renewal of an independent
18 contractor exemption certificate. The department shall adopt by rule the amount of the fee for an application or
19 certificate renewal. The application or renewal must be accompanied by the fee.

20 (3) The department shall deposit the application or renewal fee in an account in the state special
21 revenue fund to pay the costs of administering the program.

22 (4) To obtain an independent contractor exemption certificate, the applicant shall swear to and
23 acknowledge the following:

24 (a) that the applicant has been and will continue to be free from control or direction over the performance
25 of the person's own services, both under contract and in fact; and

26 (b) that the applicant is engaged in an independently established trade, occupation, profession, or
27 business and will provide sufficient documentation of that fact to the department.

28 (5) An applicant for an independent contractor exemption certificate shall submit an application under
29 oath on a form prescribed by the department and containing the following:

30 (a) the applicant's name and address;

(b) the applicant's social security number;

(c) each occupation for which the applicant is seeking independent contractor certification; and

(d) other documentation as provided by department rule to assist in determining if the applicant has an independently established business.

(6) The department shall issue an independent contractor exemption certificate to an applicant if the department determines that an applicant meets the requirements of this section.

(7) (a) A conclusive presumption of independent contractor status requires department approval of an application and requires the person to be working under an independent contractor exemption certificate.

(b) If both conditions in subsection (7)(a) exist, it is conclusive that the person working under an approved independent contractor exemption certificate has waived all rights and benefits under the Workers' Compensation Act and the Occupational Disease Act of Montana, precluding the person from obtaining benefits under either of those acts unless the person has elected coverage pursuant to 39-71-401(3).

(8) Once issued, an independent contractor exemption certificate remains in effect for 2 years unless:

(a) suspended or revoked pursuant to [section 2]; or

(b) canceled by the independent contractor.

(9) If the department denies an application for an independent contractor exemption certificate, the applicant may contest the denial by petitioning the workers' compensation court within 30 days of the mailing of the denial.

NEW SECTION. Section 2. Suspension or revocation of independent contractor exemption certificate. (1) The department may suspend an independent contractor exemption certificate for a specific business relationship if the department determines that the employing unit exerts or retains a right of control to a degree that causes a certificate holder to violate the provisions of [section 1(4)].

(2) The department may revoke an independent contractor exemption certificate after determining that the certificate holder:

(a) provided misrepresentations in the application affidavit or certificate renewal form;

(b) altered or amended the application form, the renewal application form, other supporting documentation required by the department, or the independent contractor exemption certificate; or

(c) failed to cooperate with the department in providing information relevant to the continued validity of the holder's certificate.

(3) A decision by the department to suspend or revoke an independent contractor exemption certificate takes effect upon issuance of the decision. Suspension or revocation of the independent contractor exemption certificate does not invalidate the certificate holder's waiver of the rights and benefits of the Workers' Compensation Act and Occupational Disease Act of Montana for the period prior to notice to the hiring agent by the department of the department's decision to suspend or revoke the independent contractor exemption certificate.

(4) A decision by the department to suspend or revoke an independent contractor exemption certificate may be appealed in the same manner as provided in [section 1(9)] for denial of an application for an independent contractor exemption certificate.

NEW SECTION. Section 3. Independent contractor violations -- penalty. (1) A person may not:

(a) perform work as an independent contractor without first obtaining from the department an independent contractor exemption certificate;

(b) perform work as an independent contractor when the department has revoked or denied the independent contractor's exemption certificate;

(c) transfer to another person or allow another person to use an independent contractor exemption certificate that was not issued to that person;

(d) alter or falsify an independent contractor exemption certificate; or

(e) misrepresent the person's status as an independent contractor.

(2) An employer may not:

(a) require an employee through coercion, misrepresentation, or fraudulent means to adopt independent contractor status to avoid the employer's obligations to provide workers' compensation coverage; or

(b) exert control to a degree that causes the independent contractor to violate the provisions of [section 1(4)].

(3) In addition to any other penalty or sanction provided in this chapter, a person or employer who violates a provision of this section is subject to a fine to be assessed by the department of up to \$1,000 for each violation. The department shall deposit the fines in the uninsured employers' fund. The lien provisions of 39-71-506 apply to any assessed fines.

(4) A person or employer who disputes a fine assessed by the department pursuant to this section may file an appeal with the department within 30 days of the date on which the fine was assessed. If, after mediation,

the issue is not resolved, the issue must be transferred to the workers' compensation court for resolution.

Section 4. Section 15-30-201, MCA, is amended to read:

"15-30-201. Definitions. When used in 15-30-201 through 15-30-209, the following definitions apply:

(1) "Agricultural labor" means all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) (a) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, ~~but~~

(b) The term does not include employment beyond the scope of normal household or domestic duties such as home health care or domiciliary care.

(3) "Employee" means:

(a) an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision of the United States or Montana or any agency or instrumentality of the United States, the state of Montana, or a political subdivision of the United States or Montana;

(b) an officer of a corporation;

(c) any individual who performs services for another individual or organization having the right to control the employee as to the services to be performed and as to the manner of performance;

(d) all classes, grades, or types of employees including minors and aliens, superintendents, managers, and other supervisory personnel.

(4) "Employer" means:

(a) the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person;

(b) a person who pays \$1,000 or more in wages within the current calendar year;

(c) a person who pays \$1,000 or more in cash for domestic or household service in any quarter during the current calendar year;

(d) any individual or organization, including state government and any of its political subdivisions or instrumentalities, partnership, association, trust, estate, joint-stock company, insurance company, limited liability

1 company or a limited liability partnership that has filed with the secretary of state, or domestic or foreign
2 corporation or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of
3 a deceased person who has or had in its employ one or more individuals performing services for it within this
4 state; or

5 (e) any person found to be an employer under Title 39, chapter 51, for unemployment insurance
6 purposes is considered an employer for state income tax withholding purposes.

7 (5) "Independent contractor" means an individual ~~who renders service in the course of an occupation~~
8 ~~and:~~

9 ~~— (a) has been and will continue to be free from control or direction over the performance of the services;~~
10 ~~both under contract and in fact; and~~

11 ~~— (b) is engaged in an independently established trade, occupation, profession, or business working under~~
12 ~~an independent contractor exemption certificate provided for in [section 11].~~

13 (6) "Lookback period" means the 12-month period ending the preceding June 30.

14 (7) (a) "Wages", unless specifically exempted under subsection (7)(b), means all remuneration for
15 services performed by an employee for the employer, including the cash value of all remuneration paid in any
16 medium other than cash, and includes but is not limited to the following:

17 (i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness
18 periods;

19 (ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous
20 service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

21 (iii) except those tips that are exempted in subsection (7)(b)(v), tips or other gratuities received by the
22 employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax
23 purposes.

24 (b) The term "wages" does not include:

25 (i) the amount of any payment made by the employer for employees, if the payment was made for:

26 (A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal
27 Revenue Code;

28 (B) sickness or accident disability under a workers' compensation policy;

29 (C) medical or hospitalization expenses in connection with sickness or accident disability, including
30 health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family;

(ii) compensation in the form of meals and lodging, provided the compensation is not includable in gross income for state individual income tax purposes;

(iii) distributions from a multiple employer welfare arrangement, as defined in 29 U.S.C. 1002(40)(A), to a qualified individual employee;

(iv) payments made by an employee to any group plan or program to the extent that the payments are not taxable for state income tax purposes;

(v) tips or gratuities that are in accordance with 26 U.S.C. 3402(k) or service charges that are covered by 26 U.S.C. 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging; or

(vi) payments that may not be taxed under federal law. (Subsection (7)(b)(v) terminates on occurrence of contingency--sec. 3. Ch. 634, L. 1983.)"

Section 5. Section 39-8-102, MCA, is amended to read:

"39-8-102. Definitions. As used in this chapter, unless the context indicates otherwise, the following definitions apply:

(1) "Applicant" means a person that seeks to be licensed under this chapter.

(2) "Client" means a person that obtains all or part of its workforce from another person through a professional employer arrangement.

(3) "Controlling person" means an individual who possesses the right to direct the management or policies of a professional employer organization or group through ownership of voting securities, by contract or otherwise.

(4) "Department" means the department of labor and industry.

(5) "Employee leasing arrangement" means an arrangement by contract or otherwise under which a professional employer organization hires its own employees and assigns the employees to work for another person to staff and manage, or to assist in staffing and managing, a facility, function, project, or enterprise on an ongoing basis.

(6) "Licensee" means a person licensed as a professional employer organization or group under this chapter.

1 (7) "Person" means an individual, association, company, firm, partnership, corporation, or limited liability
2 company.

3 (8) (a) "Professional employer arrangement" means an arrangement by contract or otherwise under
4 which:

5 (i) a professional employer organization or group assigns employees to perform services for a client;
6 (ii) the arrangement is or is intended to be ongoing rather than temporary in nature; and
7 (iii) the employer responsibilities are shared by the professional employer organization or group and the
8 client.

9 (b) The term does not include:

10 (i) services performed by a temporary service contractor;

11 (ii) arrangements under which a person shares employees with a commonly owned company within the
12 meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended, if:

13 (A) that person's principal business activity is not entering into professional employer arrangements;
14 and

15 (B) that person does not represent to the public that the person is a professional employer organization
16 or group;

17 (iii) arrangements existing for employment of an independent contractor, ~~as defined in 39-71-120~~
18 working under an independent contractor exemption certificate provided for in [section 1]; and

19 (iv) arrangements by a health care facility, as defined in 50-5-101, to provide its own employees to
20 perform services at and on behalf of another health care facility or at and on behalf of a private office of
21 physicians, dentists, or other physical or mental health care workers licensed and regulated under Title 37.

22 (9) "Professional employer group" or "group" means at least two but not more than five professional
23 employer organizations, each of which is majority-owned by the same person.

24 (10) (a) "Professional employer organization" means:

25 (i) a person that provides services of employees pursuant to one or more professional employer
26 arrangements or to one or more employee leasing arrangements; or

27 (ii) a person that represents to the public that the person provides services pursuant to a professional
28 employer arrangement.

29 (b) The term does not include a health care facility, as defined in 50-5-101, that provides its own
30 employees to perform services at and on behalf of another health care facility or at and on behalf of a private

office of physicians, dentists, or other physical or mental health care workers licensed and regulated under Title 37.

(11) "Temporary service contractor" means a person conducting a business that hires its own employees and assigns them to clients to fulfill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects."

Section 6. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the base period means the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which the individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) (a) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, ~~but~~

(b) The term does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(10) "Employing unit" means any individual or organization (including the state government and any of its political subdivisions or instrumentalities or an Indian tribe or tribal unit), partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person ~~that has or had in its~~ in whose employ one or more individuals ~~performing perform or performed~~ services ~~for it~~ within this state, except as provided under 39-51-204(1)(a) and (1)(q). All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

(11) "Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment offices or other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(12) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions ~~are required to~~ must be paid and from which all benefits

1 provided under this chapter must be paid.

2 (13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for
3 which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a
4 flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the employer.

5 (14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a
6 hospital.

7 (15) "Independent contractor" means an individual ~~who renders service in the course of an occupation~~
8 ~~and:~~

9 ~~— (a) has been and will continue to be free from control or direction over the performance of the services,~~
10 ~~both under a contract and in fact; and~~

11 ~~— (b) is engaged in an independently established trade, occupation, profession, or business working under~~
12 ~~an independent contractor exemption certificate provided for in [section 1].~~

13 (16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education
14 Assistance Act, 25 U.S.C. 450b(e).

15 (17) (a) "Institution of higher education", for the purposes of this part, means an educational institution
16 that:

17 (i) admits as regular students only individuals having a certificate of graduation from a high school or
18 the recognized equivalent of a certificate;

19 (ii) is legally authorized in this state to provide a program of education beyond high school;

20 (iii) provides an educational program for which ~~it~~ the institution awards a bachelor's or higher degree or
21 provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of
22 postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a
23 recognized occupation; and

24 (iv) is a public or other nonprofit institution.

25 (b) Notwithstanding subsection (17)(a), all universities in this state are institutions of higher education
26 for purposes of this part.

27 (18) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code,
28 26 U.S.C. 132.

29 (19) "State" includes, in addition to the states of the United States of America, the District of Columbia,
30 Puerto Rico, the Virgin Islands, and Canada.

(20) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

(21) "Tribal unit" means an Indian tribe and any subdivision, subsidiary, or business enterprise that is wholly owned by that tribe.

(22) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

(23) (a) "Wages", unless specifically exempted under subsection (23)(b), means all remuneration payable for personal services, including the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited to:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family;

(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules; or

(iii) a no-additional-cost service.

(24) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(25) An individual's "weekly Weekly benefit amount" means the amount of benefits that the an individual would be entitled to receive for 1 week of total unemployment."

1
2 **Section 7.** Section 39-51-204, MCA, is amended to read:

3 **"39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not include:

4 (a) domestic or household service in a private home, local college club, or local chapter of a college
5 fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and
6 has domestic or household service employment, all employees engaged in domestic or household service must
7 be excluded from coverage under this chapter if the employer:

8 (i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the
9 subject wages attributable to domestic or household service; and

10 (ii) keeps separate books and records to account for the employment of persons in domestic or
11 household service.

12 (b) service performed by a dependent member of a sole proprietor for whom an exemption may be
13 claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based
14 on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

15 (c) service performed as a freelance correspondent or newspaper carrier if the person performing the
16 service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged
17 in writing that the person performing the service and the service are not covered. As used in this subsection:

18 (i) "freelance correspondent" is a person who submits articles or photographs for publication and is paid
19 by the article or by the photograph; and

20 (ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering
21 newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the
22 employee's main duties, carries or delivers papers.

23 (d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance
24 salespeople paid solely by commission and without a guarantee of minimum earnings;

25 (e) service performed by a cosmetologist or barber who is licensed under Title 37, chapter 31, and:

26 (i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment
27 insurance and workers' compensation;

28 (ii) who contracts with a salon or shop, as defined in 37-31-101, and the contract must show that the
29 cosmetologist or barber:

30 (A) is free from all control and direction of the owner in the contract;

1 (B) receives payment for service from individual clientele; and

2 (C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge;
3 and

4 (iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The
5 existence of a single license for the salon or shop may not be construed as a lack of freedom from control or
6 direction under this subsection.

7 (f) casual labor not in the course of an employer's trade or business performed in any calendar quarter,
8 unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual
9 who is regularly employed by the employer to perform the service. "Regularly employed" means that the service
10 is performed during at least 24 days in the same quarter.

11 (g) service performed by sole proprietors, working members of a partnership, members of a
12 member-managed limited liability company that has filed with the secretary of state, or partners in a limited
13 liability partnership that has filed with the secretary of state;

14 (h) service performed for the installation of floor coverings if the installer:

15 (i) bids or negotiates a contract price based upon work performed by the yard or by the job;

16 (ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

17 (iii) may perform service for anyone without limitation;

18 (iv) may accept or reject any job;

19 (v) furnishes substantially all tools and equipment necessary to provide the service; and

20 (vi) works under a written contract that:

21 (A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract
22 obligations;

23 (B) states that the installer is not covered by unemployment insurance; and

24 (C) requires the installer to provide a current workers' compensation policy or to obtain an exemption
25 from workers' compensation requirements;

26 (i) service performed as a direct seller as defined by 26 U.S.C. 3508;

27 (j) service performed by a petroleum land professional. As used in this subsection, "petroleum land
28 professional" means a person who:

29 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating
30 a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work relief or work training;

(n) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(o) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed by elected public officials;

(q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(r) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in 5 U.S.C. 8501(1)(I) and section 3306(c)(6) of the Federal Unemployment Tax Act;

(s) service in which unemployment insurance is payable under an unemployment insurance system

1 established by an act of congress if the department enters into agreements with the proper agencies under an
2 act of congress and those agreements become effective in the manner prescribed in the Montana Administrative
3 Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring
4 potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of
5 congress or who have, after acquiring potential rights to unemployment insurance under the act of congress,
6 acquired rights to benefits under this chapter;

7 (t) service performed in the employ of a school or university if the service is performed by a student who
8 is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse
9 is advised, at the time that the spouse commences to perform the service, that the employment of the spouse
10 to perform the service is provided under a program to provide financial assistance to the student by the school
11 or university and that the employment is not covered by any program of unemployment insurance;

12 (u) service performed by an individual who is enrolled at a nonprofit or public educational institution that
13 normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in
14 attendance at the place where its educational activities are carried on, as a student in a full-time program taken
15 for credit at an institution that combines academic instruction with work experience if the service is an integral
16 part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u)
17 does not apply to service performed in a program established for or on behalf of an employer or group of
18 employers;

19 (v) service performed as an officer or member of the crew of a vessel on the navigable waters of the
20 United States;

21 (w) service performed by an alien admitted to the United States to perform agricultural labor pursuant
22 to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act;

23 (x) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for
24 another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873;

25 (y) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care
26 for individuals who, because of age or infirmity, are unable to care for themselves when the person providing
27 the service is employed directly by a family member or an individual who is a legal guardian; or

28 (z) service performed by an individual as an official, including a timer, referee, umpire, or judge, at an
29 amateur athletic event.

30 (2) An individual found to be an independent contractor by the department under the terms of

1 ~~39-71-401(3)~~ [section 1] is considered an independent contractor for the purposes of this chapter. An
2 independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant
3 to 39-51-2402.

4 (3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or
5 a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is
6 excluded from employment for purposes of the Federal Unemployment Tax Act."

7
8 **Section 8.** Section 39-71-105, MCA, is amended to read:

9 **"39-71-105. Declaration of public policy.** For the purposes of interpreting and applying Title 39,
10 chapters 71 and 72, the following is the public policy of this state:

11 (1) ~~It is an~~ An objective of the Montana workers' compensation system is to provide, without regard to
12 fault, wage supplement and medical benefits to a worker suffering from a work-related injury or disease.
13 Wage-loss benefits are not intended to make an injured worker whole; ~~they~~ but are intended to assist a worker
14 at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable
15 relationship to actual wages lost as a result of a work-related injury or disease.

16 (2) It is the intent of the legislature to assert that a conclusive presumption exists that recognizes that
17 a holder of a current, valid independent contractor exemption certificate issued by the department is an
18 independent contractor if the person is working under the independent contractor exemption certificate. The
19 holder of an independent contractor exemption certificate may waive the rights, benefits, and obligations of Title
20 39, chapters 71 and 72.

21 ~~(2)(3)~~ (3) A worker's removal from the ~~work force due to~~ workforce because of a work-related injury or
22 disease has a negative impact on the worker, the worker's family, the employer, and the general public.
23 Therefore, ~~it is~~ an objective of the workers' compensation system is to return a worker to work as soon as
24 possible after the worker has suffered a work-related injury or disease.

25 ~~(3)(4)~~ (4) Montana's workers' compensation and occupational disease insurance systems are intended to
26 be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be
27 able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed
28 to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

29 ~~(4)(5)~~ (5) Title 39, chapters 71 and 72, must be construed according to their terms and not liberally in favor
30 of any party.

1 ~~(5)~~(6) It is the intent of the legislature that stress claims, often referred to as "mental-mental claims" and
2 "mental-physical claims", are not compensable under Montana's workers' compensation and occupational
3 disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims
4 have a potential to place an economic burden on the workers' compensation and occupational disease system.
5 The legislature also recognizes that there are other states that do not provide compensation for various
6 categories of stress claims and that stress claims have presented economic problems for certain other
7 jurisdictions. In addition, not all injuries are compensable under the present system, as is the case with repetitive
8 injury claims, and it is within the legislature's authority to define the limits of the workers' compensation and
9 occupational disease system."

10
11 **Section 9.** Section 39-71-117, MCA, is amended to read:

12 **"39-71-117. Employer defined.** (1) "Employer" means:

13 (a) the state and each county, city and county, city school district, and irrigation district; all other districts
14 established by law; all public corporations and quasi-public corporations and public agencies; each person; each
15 prime contractor; each firm, voluntary association, limited liability company, limited liability partnership, and
16 private corporation, including any public service corporation and including an independent contractor who has
17 a person in service under an appointment or contract of hire, expressed or implied, oral or written; and the legal
18 representative of any deceased employer or the receiver or trustee of the deceased employer;

19 (b) any association, corporation, limited liability company, limited liability partnership, or organization
20 that seeks permission and meets the requirements set by the department by rule for a group of individual
21 employers to operate as self-insured under plan No. 1 of this chapter; and

22 (c) any nonprofit association, limited liability company, limited liability partnership, or corporation or other
23 entity funded in whole or in part by federal, state, or local government funds that places community service
24 participants, as described in 39-71-118(1)(e), with nonprofit organizations or associations or federal, state, or
25 local government entities.

26 (2) A temporary service contractor is the employer of a temporary worker for premium and loss
27 experience purposes.

28 (3) Except as provided in chapter 8 of this title, an employer defined in subsection (1) who uses the
29 services of a worker furnished by another person, association, contractor, firm, limited liability company, limited
30 liability partnership, or corporation, other than a temporary service contractor, is presumed to be the employer

for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.

(4) An interstate or intrastate common or contract motor carrier that maintains a place of business in this state and uses an employee or worker in this state is considered the employer of that employee, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the worker in this state is certified as an independent contractor as provided in ~~39-71-401(3)~~ section 11; or

(b) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation furnishing employees or workers in this state to a motor carrier has obtained Montana workers' compensation insurance on the employees or workers in Montana both at the inception of employment and during all phases of the work performed."

Section 10. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

1 (b) casual employment as defined in 39-71-116;

2 (c) employment of a dependent member of an employer's family for whom an exemption may be
3 claimed by the employer under the federal Internal Revenue Code;

4 (d) employment of sole proprietors, working members of a partnership, working members of a limited
5 liability partnership, or working members of a member-managed limited liability company, except as provided
6 in subsection (3);

7 (e) employment of a real estate, securities, or insurance salesperson paid solely by commission and
8 without a guarantee of minimum earnings;

9 (f) employment as a direct seller as defined by 26 U.S.C. 3508;

10 (g) employment for which a rule of liability for injury, occupational disease, or death is provided under
11 the laws of the United States;

12 (h) employment of a person performing services in return for aid or sustenance only, except
13 employment of a volunteer under 67-2-105;

14 (i) employment with a railroad engaged in interstate commerce, except that railroad construction work
15 is included in and subject to the provisions of this chapter;

16 (j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;

17 (k) employment of a person performing services as a newspaper carrier or freelance correspondent if
18 the person performing the services or a parent or guardian of the person performing the services in the case of
19 a minor has acknowledged in writing that the person performing the services and the services are not covered.
20 As used in this subsection, "freelance correspondent" is a person who submits articles or photographs for
21 publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

22 (i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles;
23 but

24 (ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries
25 or delivers papers.

26 (l) cosmetologist's services and barber's services as ~~defined~~ referred to in 39-51-204(1)(e);

27 (m) a person who is employed by an enrolled tribal member or an association, business, corporation,
28 or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is
29 conducted solely within the exterior boundaries of an Indian reservation;

30 (n) employment of a jockey who is performing under a license issued by the board of horseracing from

the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

(p) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(q) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(r) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager either:

(A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of

1 subsection (2)(r)(iii)(A) or (2)(r)(iii)(B).

2 (s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

3 (t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise
4 of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

5 (u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care
6 for individuals who, because of age or infirmity, are unable to care for themselves when the person providing
7 the service is employed directly by a family member or an individual who is a legal guardian;

8 (v) employment of a person who is not an employee or worker in this state as defined in 39-71-118(10);

9 (w) employment of a person who is working under an independent contractor exemption certificate.

10 (3) (a) ~~A sole proprietor, a working member of a partnership, a working member of a limited liability~~
11 ~~partnership, or a working member of a member-managed limited liability company who represents to the public~~
12 ~~that the person is an independent contractor~~ A person who regularly performs services at locations other than
13 the person's own fixed business location shall elect to be bound personally and individually by the provisions
14 of compensation plan No. 1, 2, or 3 ~~but may apply to the department for an exemption from the Workers'~~
15 ~~Compensation Act unless the person has waived the rights and benefits of the Workers' Compensation Act and~~
16 ~~Occupational Disease Act of Montana by obtaining an independent contractor exemption certificate from the~~
17 ~~department pursuant to [section 1].~~

18 (b) A person who holds an independent contractor exemption certificate may purchase a workers'
19 compensation insurance policy and with the insurer's permission elect coverage for the certificate holder.

20 ~~(b) The application must be made in accordance with the rules adopted by the department. There is a~~
21 ~~\$17 fee for the initial application. Any subsequent application renewal must be accompanied by a \$17 application~~
22 ~~fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs~~
23 ~~of administering the program.~~

24 ~~(c) When an application is approved by the department, it is conclusive as to the status of an~~
25 ~~independent contractor and precludes the applicant from obtaining benefits under this chapter.~~

26 ~~(d) The exemption, if approved, remains in effect for 2 years following the date of the department's~~
27 ~~approval. To maintain the independent contractor status, an independent contractor shall submit a renewal~~
28 ~~application every 2 years. The renewal application and the \$17 renewal application fee must be received by the~~
29 ~~department at least 30 days before the anniversary date of the previously approved exemption.~~

30 ~~(e) A person who makes a false statement or misrepresentation concerning that person's status as an~~

1 exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose the penalty
2 for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The
3 lien provisions of 39-71-506 apply to the penalty imposed by this section.

4 ~~_____ (f) If the department denies the application for exemption, the applicant may, after mediation pursuant~~
5 ~~to department rules, contest the denial by petitioning the workers' compensation court.~~

6 (c) For the purposes of this subsection (3), "person" means a sole proprietor, a working member of a
7 partnership, a working member of a limited liability partnership, or a working member of a member-managed
8 limited liability company.

9 (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its
10 employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private
11 corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or
12 managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

13 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering
14 the notice to the board of directors of the corporation or to the management organization of the
15 manager-managed limited liability company; or

16 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by
17 delivering the notice to the board of directors of the corporation or to the management organization of the
18 manager-managed limited liability company and to the insurer.

19 (b) If the employer changes plans or insurers, the employer's previous election is not effective and the
20 employer shall again serve notice to its insurer and to its board of directors or the management organization of
21 the manager-managed limited liability company if the employer elects to be bound.

22 (5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership,
23 a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the
24 purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner,
25 member, or manager to exemption from coverage.

26 (6) Each employer shall post a sign in the workplace at the locations where notices to employees are
27 normally posted, informing employees about the employer's current provision of workers' compensation
28 insurance. A workplace is any location where an employee performs any work-related act in the course of
29 employment, regardless of whether the location is temporary or permanent, and includes the place of business
30 or property of a third person while the employer has access to or control over the place of business or property

1 for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided
2 by the department, distributed through insurers or directly by the department, and posted by employers in
3 accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign
4 as provided in this subsection is subject to a \$50 fine for each citation."

5
6 **Section 11.** Section 39-71-409, MCA, is amended to read:

7 **"39-71-409. Waivers by employee invalid.** ~~No (1) An~~ agreement by an employee to waive any rights
8 under this chapter ~~for any injury to be received shall be~~ is not valid.

9 (2) (a) A person who possesses and is working under a current independent contractor exemption
10 certificate issued by the department waives all rights and benefits of the Workers' Compensation Act and
11 Occupational Disease Act of Montana unless the person elects coverage pursuant to 39-71-401(3)(b).

12 (b) A waiver by reason of an independent contractor exemption certificate is an exemption to the general
13 prohibition of waiving the advantage of a statute enacted for a public reason as provided for in 1-3-204."

14
15 **Section 12.** Section 39-71-415, MCA, is amended to read:

16 **"39-71-415. Procedure for resolving disputes regarding independent contractor status.** (1) If an
17 individual, employer, or insurer has a dispute as to whether an individual is an independent contractor or an
18 employee, ~~as defined in this chapter,~~ any party may, after mediation pursuant to department rules, petition the
19 workers' compensation court for resolution of the dispute.

20 (2) If a claimant and insurer have a dispute over benefits and the dispute involves an issue of whether
21 the claimant is an independent contractor or employee, ~~as defined in this chapter, and after mediating pursuant~~
22 ~~to department rule,~~ either party may, after mediation pursuant to department rules, petition the workers'
23 compensation judge for resolution of the dispute in accordance with 39-71-2905.

24 (3) A dispute between an employer and the department involving the issue of whether a worker is an
25 independent contractor or an employee, but not involving workers' compensation benefits, must be brought
26 before the independent contractor central unit of the department for resolution. A decision of the independent
27 contractor central unit is final unless a party dissatisfied with the decision appeals by filing a petition for
28 ~~mediation within 10 days of service of the decision. A party may petition the workers' compensation court for~~
29 ~~resolution of the dispute within 45 days of the mailing of the mediator's report~~ with the workers' compensation
30 court within 30 days of the mailing of the decision by the independent contractor central unit. An appeal from the

independent contractor central unit to the workers' compensation court brought pursuant to this part is a new proceeding.

~~(4) Notwithstanding the provisions of subsection (1), an individual may apply to the department for an exemption from the Workers' Compensation Act in accordance with 39-71-401."~~

Section 13. Section 39-72-102, MCA, is amended to read:

"39-72-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" ~~is as defined~~ has the meaning provided in 39-71-116.

(2) "Child" ~~is as defined~~ has the meaning provided in 39-71-116.

(3) "Department" means the department of labor and industry.

(4) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing work in the worker's job pool. Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement"; but ~~they~~ have no reference to "permanent partial disability".

(5) "Employee" ~~is as defined~~ has the meaning provided in 39-71-118.

(6) "Employer" ~~is as defined~~ has the meaning provided in 39-71-117.

(7) "Independent contractor" ~~is as defined in 39-71-120~~ means a person who is working under an independent contractor exemption certificate provided for in [section 1].

(8) "Insurer" is as defined in 39-71-116.

(9) "Invalid" is as defined in 39-71-116.

(10) (a) "Occupational disease" means harm, damage, or death as set forth in 39-71-119(1) arising out of or contracted in the course and scope of employment and caused by events occurring on more than a single day or work shift.

(b) The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.

(11) "Order" is as defined in 39-71-116.

(12) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of ~~such~~ employment in coal mines.

(13) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO_2) and characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs, causing the characteristic x-ray pattern, and by other variable clinical manifestations.

(14) "Wages" is as defined in 39-71-123.

(15) "Year" is as defined in 39-71-116."

NEW SECTION. Section 14. Repealer. Sections 39-51-604 and 39-71-120, MCA, are repealed.

NEW SECTION. Section 15. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply to [sections 1 through 3].

NEW SECTION. Section 16. Effective date -- applicability. [This act] is effective on passage and approval and applies to all applications and renewals for the independent contractor exemption certificate submitted to the department after [the effective date of this act].

- END -

FISCAL NOTE

Bill #: SB0108 Title: Revise laws governing independent contractors

Primary Sponsor: Lewis, D Status: As Introduced

Dave Lewis 1/11/05 David Ewer 1/11/05
Sponsor signature Date David Ewer, Budget Director Date

Fiscal Summary

	<u>FY 2006 Difference</u>	<u>FY 2007 Difference</u>
Expenditures:		
State Special Revenue	\$812,490	\$792,954
Revenue:		
State Special Revenue	\$820,000	\$820,000
Net Impact on General Fund Balance:	\$0	\$0

- | | |
|---|--|
| ☐ Significant Local Gov. Impact | ☒ Technical Concerns |
| ☐ Included in the Executive Budget | ☐ Significant Long-Term Impacts |
| ☐ Dedicated Revenue Form Attached | ☒ Needs to be included in HB 2 |

Fiscal Analysis

ASSUMPTIONS:

Department of Labor and Industry

1. SB 108 revises requirements for certification for independent contractors.
2. The department estimates 10,000 Independent Contractor (IC) applications each fiscal year and independent contractors would apply for certification at the average of a two-year historical rate; in FY 2003 there were 8,215 and in FY 2004 there were 12,141 IC applications.
3. The IC fee will be set by rule at a level to generate revenue sufficient to fully fund the costs of operating the program including staff, the education program, and necessary computer development. This fee is assumed will be less than \$100 per application.
4. No penalties are assumed. (New Section 3)
5. Enforcement of this act would require six additional FTE, all grade 14 auditors.
6. One auditor would be employed in Helena, and the other five would be in Kalispell, Miles City, Bozeman, Great Falls, and Missoula. All out-stationed staff requires a Motor Pool vehicle (@ \$4,800/year) and must pay market rental rates of those cities. (\$24,000 for the vehicles plus \$19,422 for rent in 5 cities)
7. Other support services for the additional staff are based on the standard costs and installation for computers and phones, cost allocation plan (CAP) rates, one-time-only office furniture. (\$46,536 in FY 2006 and \$27,000 in FY 2007)

Fiscal Note Request SB0108, As Introduced

(continued)

8. The IC program would contract to design and implement a web-based computer system to handle the applications and history of the IC applicants. The OTO contract amount is estimated to be \$500,000 to spread over the biennium (if not longer) at \$250,000 each year of the biennium.
9. The IC program would spend \$185,000 each year on a statewide education component.

FISCAL IMPACT:**Department of Labor and Industry**

	<u>FY 2006</u> <u>Difference</u>	<u>FY 2007</u> <u>Difference</u>
FTE	6.00	6.00
<u>Expenditures:</u>		
Personal Services	287,532	287,532
Operating Expenses	<u>524,958</u>	<u>505,422</u>
TOTAL	\$812,490	\$792,954
<u>Funding of Expenditures:</u>		
State Special Revenue (02455)	\$812,490	\$792,954
<u>Revenues:</u>		
State Special Revenue (02455)	\$820,000	\$820,000
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>		
State Special Revenue (02455)	7,510	27,046

TECHNICAL NOTES:

There is another bill - SB 64 - which moves the IC revenue from fund 02455 (Workers' Compensation Assessment) into fund 02346 (Contractor Registration revenue) of 39-9-206, MCA. If both SB 64 and SB 108 are successful, the revenue and expenditures must be shown in fund 02346; if only SB 108 is successful, the revenue and expenditures must be shown in fund 02455.

FISCAL NOTE

Bill #: SB0108

Title: Revise laws governing independent contractors

Primary Sponsor: Lewis, D

Status: As Introduced - Revised

Dan Lewis

Sponsor signature

Date

David Ewer

David Ewer, Budget Director

2/7/05

Date

Fiscal Summary

	<u>FY 2006 Difference</u>	<u>FY 2007 Difference</u>
Expenditures:		
State Special Revenue	\$812,490	\$792,954
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- | | |
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Fiscal Analysis

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7. Other support services for the additional staff are based on the standard costs and installation for computers and phones, cost allocation plan (CAP) rates, one-time-only office furniture. (\$46,536 in FY 2006 and \$27,000 in FY 2007)

SB 108 # 2

Fiscal Note Request SB0108, As Introduced - Revised
(continued)

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MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN VICKI COCCHIARELLA**, on January 11,
2005 at 9:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Vicki Cocchiarella, Chairman (D)
Sen. Joe Balyeat (R)
Sen. Duane Grimes (R)
Sen. Dave Lewis (R)
Sen. Glenn Roush (D)
Sen. Frank Smith (D)
Sen. Carolyn Squires (D)
Sen. Donald J. Steinbeisser (R)
Sen. Bill Tash (R)
Sen. Jon Tester (D)
Sen. Joseph (Joe) Tropila (D)

Members Excused: None.

Members Absent: None.

Staff Present: Annie Glover, Committee Secretary
Pat Murdo, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 64, 1/6/2005; SB 53, 1/6/2005;
SB 108, 1/6/2005
Executive Action: SB 61, SB 135, SB 99, SJ 3, SB 100

Motion: SEN. ROUSH moved that SJ 3 DO PASS.

Discussion:

Motion/Vote: SEN. BALLYEAT moved that SJ 3 BE AMENDED. Motion carried unanimously.

Motion/Vote: SEN. ROUSH moved that SJ 3 DO PASS AS AMENDED. Motion carried unanimously.

01:07:31

EXECUTIVE ACTION ON SB 100

Motion: SEN. ROUSH moved that SB 100 DO PASS.

Discussion:

Motion/Vote: SEN. BALLYEAT moved that SB 100 BE AMENDED. Motion carried unanimously.

Motion/Vote: SEN. ROUSH moved that SB 100 DO PASS AS AMENDED. Motion carried unanimously.

01:09:45

EXECUTIVE ACTION ON SB 53

Motion/Vote: SEN. SQUIRES moved that SB 53 DO PASS. Motion carried unanimously.

Break at 11:00 A.M.

Restart timer at 5:00 P.M.

00:00:01

HEARING ON SB 108

Opening Statement by Sponsor: SEN. DAVE LEWIS (R), SD 42, opened the hearing on SB 108, Revise laws governing independent contractors.

EXHIBIT(bus07a02)

EXHIBIT(bus07a03)

00:05:45

Proponents' Testimony:

Mr. Keith Kelly, Commissioner, Department of Labor and Industry

EXHIBIT(bus07a04)

EXHIBIT(bus07a05)

Mr. Jerry Keck, Administrator, Department Relations Division,
Department of Labor and Industry
EXHIBIT(bus07a06)

Mr. Dave Cogley, Building Contractor, Wildwood Log Homes
EXHIBIT(bus07a07)

Mr. Jason Miller, United Brotherhood of Carpenters Union
Mr. Derek Brown, General Contractor
Mr. Michael Whistler, President, Whistler Tiles and Stone
Mr. Spook Stang, Executive Vice President, Montana Motor
Carriers Association
EXHIBIT(bus07a08)

Mr. Bob Nommenson, Montana Contractors Compensation Fund
Mr. Tom Evans, Lewistown Century Companies Independent Contractor
Ms. Barbara Ranf, Montana Chamber of Commerce
Mr. Carl Schweitzer, Montana Subcontractors Association
Mr. Jason Todhunter, Montana Logging Association
Mr. Cary Hegreberg, Montana Contractors Association
Mr. John Youngberg, Montana Farm Bureau
Mr. Byron Roberts, Montana Building Association
Mr. Glenn Oppel, Montana Association of Realtors
Ms. Nancy Butler, Montana State Fund
Mr. Larry Jones, Liberty Northwest Insurance
Mr. Bob Worthington, Montana Municipal Insurance Authority
Mr. Harold Blattie, Montana Association of Counties

00:47:56

Opponents' Testimony:

Mr. Albert McGuigan, Independent Contractor
EXHIBIT(bus07a09)

Mr. Brad Molnar, former Representative speaking for son,
independent contractor

01:05:47

Informational Testimony:

Mr. Riley Johnson, National Federation of Independent Business

01:08:27

Questions from Committee Members and Responses:

Question referred to Mr. Kevin Braun, Council, Department of
Labor and Industry

02:03:35

Closing by Sponsor:

MONTANA SENATE
2005 LEGISLATURE

ROLL CALL

BUSINESS AND LABOR COMMITTEE

DATE 1/11/05

NAMES	PRESENT	ABSENT	EXCUSED
SEN. VICKI COCCHIARELLA, CHAIR	X		
SEN. JOE BALYEAT	X		
SEN. DUANE GRIMES	X		
SEN. DAVE LEWIS	X		
SEN. GLENN ROUSH	X		
SEN. FRANK SMITH	X		
SEN. CAROLYN SQUIRES	X		
SEN. DONALD STEINBEISSER	X		
SEN. BILL TASH	X		
SEN. JON TESTER	X		
SEN. JOE TROPILA	X		
PAT MURDO, LSD	X		
ANGELA WONG, COMMITTEE SECRETARY	X		

Amendments to Senate Bill No. 108
1st Reading Copy

Requested by Senator Dave Lewis

For the Senate Business and Labor Committee

Prepared by Pat Murdo
January 10, 2005 (2:13pm)

1. Title, page 1, line 16.

Following: "SECTIONS"

Strike: "15-30-201,"

§

1

Date _____

BILL NO. _____

2. Page 2, line 11.

Following: "certificate"

Insert: "unless the person has elected to be bound personally and
individually by the provisions of compensation plan No. 1,
2, or 3"

3. Page 4, line 13.

Following: "certificate"

Insert: "unless the person has elected to be bound personally and
individually by the provisions of compensation plan No. 1,
2, or 3"

4. Page 5, line 3, through page 7, line 13.

Strike: section 4 in its entirety

Renumber: subsequent sections

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. _____

DATE _____

BILL NO. _____

5. Page 24, line 12.

Following: "is an"

Strike: "exemption"

Insert: "exception"

- END -

Amendments to Senate Bill No. 108
1st Reading Copy

Requested by Senator Dave Lewis

For the Senate Business and Labor Committee

Prepared by Pat Murdo
January 11, 2005 (8:46am)

1. Page 2, line 22.

Following: "(4)"

Insert: "(a)"

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. _____

DATE _____

BILL NO. _____

2. Page 2, line 24.

Strike: "(a)"

Insert: "(i)"

3. Page 2, line 26.

Strike: "(b)"

Insert: "(ii)"

4. Page 2.

Following: line 27

Insert: "(b) For the purposes of subsection (4)(a)(i), an
endorsement required for licensure, as provided in 37-47-
303, does not imply or constitute control."

- END -

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 4
DATE 1/11/05
BILL NO. SB 108

SENATE BUSINESS AND LABOR COMMITTEE
Testimony in Favor of SB 108
Hearing on January 11, 2005

MEMBERSHIP LIST OF SB 270 (2003 SESSION) ADVISORY COMMITTEE

Webb Brown	Montana Chamber of Commerce
Nancy Butler	Montana State Fund
Dave Cogley	Wildwood Log Homes
Jerry Driscoll	Montana State AFL-CIO
Cary Hegreberg	Montana Contractors Association
Larry Jones	Liberty Northwest Insurance
Riley Johnson	National Federation of Independent Business
Jerry Keck	Montana Department of Labor and Industry
Jacqueline Lenmark	American Insurance Association (AIA)
Larry Mayo	Montana Building Trades Council
Jason Miller	Pacific Northwest Regional Council of Carpenters
Jim Nys	Personnel Plus
Byron Roberts	Montana Building Industry Association
Carl Schweitzer	American Subcontractors Association of Montana
Brain Smith	Montana Motor Carriers Association
Bob Worthington	Montana Municipal Insurance Authority

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. _____

DATE _____

BILL NO. _____

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 5
DATE 1/11/05
BILL NO. SB 108

TESTIMONY IN FAVOR OF SB 108
Before the Senate Business and Labor Committee
Keith Kelly, Commissioner
Department of Labor and Industry
January 11, 2005

Madam Chair, members of the committee, for the record my name is Keith Kelly. I am the Commissioner of the Department of Labor and Industry. On behalf of this Administration I rise in support of Senate Bill 108. This bill is a result of an interim study requested in SB 270 of the 2003 Legislature. SB 270 directed the Commissioner of Labor to appoint and provide staff for an advisory committee to study the issues related to exemptions of independent contractors from coverage under the Workers' Compensation Act. The Department of Labor was directed to periodically report the findings and progress of the advisory committee, including any recommendations for proposed legislation, to the Economic Affairs Interim Committee. SB 108 is the result of that extensive study and collaborative effort of a broad range of interests in this issue.

Madam Chair, with your permission, I would like to distribute a sheet listing the members of the Advisory Committee. This group met for a total of five (5) day long meetings over the course of 1 year to study the issues relating to independent contractors. The Advisory Committee members reached consensus on recommendations for proposed legislation and presented those recommendations to the economic affairs interim committee meeting on September 7, 2004. The Economic Affairs Interim Committee unanimously approved recommending the proposed legislation as a committee bill. SB 108 is the product of this process.

It is fortunate that the 2003 legislature requested this study because shortly after the 2003 Legislature adjourned, the Montana Supreme Court issued it's decision in a case with major implications for independent contractors, Wild v. Fregein Construction. The Court held that the independent contractor exemption certificate issued by the Department is not conclusive as to the status of a worker as an independent contractor. What was viewed during the 2003 session as an issue relating to potential fraud and abuse leading to an uneven playing field suddenly took on greater urgency. Everyone involved, prime contractors, sub-contractors, workers' compensation insurers, unions representing employees in the construction industry and the independent contractors themselves want to be confident there is certainty and fairness in the designation of who is an employee and who is an independent contractor.

SB 108 is a consensus recommendation of the Advisory Committee members to address this important policy issue. I urge your support for the bill.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 5
DATE 1/11/05
BILL NO. SB 108

TESTIMONY IN FAVOR OF SB 108
Before the Senate Business and Labor Committee
Jerry Keck, Administrator
Employment Relations Division
Department of Labor and Industry
January 11, 2005

Madam Chair, members of the committee, for your record my name is Jerry Keck. I am the administrator of the Employment Relations Division in the Department of Labor and Industry. I was the Department representative appointed the SB 270 Advisory Committee charged with studying issues related to independent contractors.

As part of the Advisory Committee deliberation, the Department commissioned a Best Practices study that was done by the Hayes Company from Minneapolis, a national workers' compensation consulting firm. That study revealed that Montana has a higher percentage of independent contractors than any other state that has a registration process. Montana currently has over 33,000 independent contractors. This is 8% of our workforce. Florida has the next highest percentage with only 2%. The Best Practices study concluded that one of the reasons for this high percentage in Montana was the easy process for obtaining the independent contractor exception that makes fraud or misuse of the system possible.

The Advisory Committee spent the first two meetings identifying the problem areas and issues related to independent contractors and identifying possible solutions to those issues. Ultimately the Committee agreed upon a set of general principles for guiding the changes needed to restore certainty and fairness to the independent contractor statutes.

1. Maintain the exemption in the law for Independent Contractors from the Workers' Compensation Act.
2. Keep the exemption certificate process, but provide the Department of Labor and Industry screening, enforcement and audit authority.
3. Provide for education of Independent Contractors and employers to clearly understand "free from direction and control". Encourage use of a Memorandum of Agreement (contract) to define the relationship.
4. Make the exemption certificate conclusive as to Independent Contractor status.
5. Increase the fee for the Independent Contractor Exemption certificate to fund the increased screening, enforcement and audit activities.
6. Define penalties that can be used as an enforcement tool to encourage compliance and discourage fraud.

The Advisory Committee then agreed upon an application process and enforcement plan that implements the general principles. The key components of the application and enforcement plan include:

Testimony in Favor of SB 108

Jerry Keck

January 11, 2005

1. Screening of new applications to verify documentation to support Independent Contractor status.
2. A comprehensive educational program aimed at employers, hiring agents and Independent Contractors focused on 'independent business' and 'control' tests.
3. On-site audits to verify that the 'independent business' and 'control' standards are being met in practice.
4. Authority to revoke or suspend Independent Contractor exemptions when violations of the statute are found.
5. Review of renewal applications to verify documentation to support continued Independent Contractor status.

Madam Chair, members of the committee, SB 108 contains the general principles and key elements of an application and enforcement plan to implement the consensus agreement of the Advisory Committee. I would be happy to answer any questions that you might have.

TESTIMONY IN FAVOR OF SB 108
Before the Senate Business and Labor Committee
Dave Cogley, Building Contractor
Wildwood Log Homes
January 11, 2005

Madame Chair, members of the committee, my name is Dave Cogley. I am a building contractor in the Helena area. I operate as a sole proprietor and have utilized the independent contractor exemption since I began building in 1978. I have held the IC certificate since the IC certification law was passed in 1983. I served on the SB 270 Advisory Committee Jerry Keck referred to, and I support the report of that committee and this legislation which was produced by that committee.

As you know, the workers compensation act requires me, as a self-employed person offering contracted services, to either purchase work comp insurance on myself or obtain the IC exemption. This exemption is strictly a personal exemption for me, and does not affect my obligation as an employer to provide workers compensation coverage for any employees I may have. The exemption is important to me not only because the insurance is expensive, but the medical coverage portion adds nothing to the coverage I already have under my general health insurance policy, which provides work-related medical protection as well as much broader medical protection. But because they are separate lines of insurance no adjustment of premium is possible on either policy simply because I also have the other. Also as an independent business person I feel strongly that I should have the right to determine what protection I want to afford for myself personally in the operation of my business, and not be forced into a system of insurance which in my opinion does not fit my situation.

Prior to 1983 a person's status as an independent contractor exempt from the act was a factual determination made after an injury was sustained and a claim was made. In order to provide more certainty for the parties as to where the liability for any potential work injury would lay, an IC certification process was adopted in 1983 which provided a predetermination of IC status. The statute stated that the certificate, once issued, was to be conclusive and would bar any subsequent claims by the certificate holder for workers compensation. Under this process the Department of Labor and Industry screened applicants for the IC exemption and issued certificates for those meeting the statutory definition of independent contractor. However, over time the screening process became somewhat of a rubber stamp process with little oversight or enforcement. Perhaps more importantly, there was very little education of the industry or the public as to the process or its purposes. Because of abuses and ongoing concerns with the IC process, particularly in the construction industry, legislation was introduced in both 1991 and 1993 to eliminate the exemption for workers in that industry, and make work comp coverage mandatory. That legislation failed then, but as we discussed in the advisory committee, if the status of an independent contract relationship cannot be established conclusively at the time of engaging the IC to perform work, then the only feasible alternative may be mandatory workers comp coverage for everyone. Some industry groups are already

requiring this as a result of the Wild decision. I would hate to see us go there as a matter of state policy.

I believe SB 108 addresses the concerns rightly expressed by the court with the IC certification process, by beefing up the screening, enforcement, and audit authority of the department and providing for a meaningful process. It will not be difficult for anyone who is truly operating independently to obtain certification. The legislation also provides for an education component wherein independent contractors and those engaging independent contractors will better understand the responsibilities of each in entering into and maintaining that relationship. It defines penalties that can be used to encourage compliance and discourage fraud. It also addresses the concern expressed by the court as to how this exemption fits with the general policy statement of the workers compensation act and the non-waiver provisions of that act.

Some may object to the increased authority of the department under this bill, and the increased cost of the program. The committee was very mindful of these concerns, and fashioned the process to be as simple as possible but yet be effective. I personally feel the benefits of having a conclusive certification process fully justify any extra cost and burden. Further, if the alternative is mandatory coverage, then the cost is cheap by comparison.

I would therefore urge the committee to act favorably on SB 108. Thank you for your consideration.

Dave Longley

Billings, MT
(406) 245-8030
800-228-5589 Toll Free
(406) 248-7850 Fax



www.whitewoodtransport.com

Missoula, MT
(406) 829-1414
888-273-2438 Toll Free
(406) 829-1407 Fax

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 8
DATE 1/11/05
BILL NO. SB 108

January 11, 2005

The Honorable Senator Vicki Cocchiarella
Chair, Senate Business and Labor Committee
Capital Station
Helena, MT 59620

Re: PROPONENT SB 108

Dear Senator Cocchiarella,

I serve as the President of Whitewood Transportation, a specialized motor carrier in the size and weight transport business. Our offices are located both in Billings and Missoula, MT. We currently employ twelve office staff, all whom are members of the Montana State Fund, we also contract the services of thirty-five independent owner operators.

The transportation service we provide is unique and complicated, requiring extremely specialized drivers and equipment. It is unlikely that we could offer the services that we provide today without the services of these independent contractors. It is critical to their survival and to ours as a company that they maintain the independent contract status that they have in the past, as recognized by the Internal Revenue Service.

Senate Bill 108 will help distinguish an independent contractor through a formalized exemption certification process. The fact that our owner operators own their equipment, pay for all of their fuel, maintenance, taxes, licenses and insurance, does not seem to be enough.

I would note that there is an element of control related to safety practices that we must maintain over our owner operators that is imposed upon us by the Federal Motor Carrier Safety Administration. FMCSA does not differentiate between a truck driver and an owner operator and we must abide by those regulations. I believe this should not be considered as the type of control mentioned in section 1, (4,a) of this bill.

In closing, as a proponent of SB 108, I respectfully request your support.

Sincerely,

Michael P. Wilson

P.O. BOX 30553, BILLINGS, MT 59107-0553
HEAVY HAUL, CONSTRUCTION, MINING, CRANES, PIPELINES & TOWAWAYS



P.O. BOX 1530

BAKER, MT. 59313

ICC - MC - 185031

US DOT 265176

TELEPHONE — 406-778-3304

TOLL FREE — 800-423-0141

FAX — 406-778-3196

www.quality-transportation.com

1/11/05

The Honorable Senator Vicki Cocchiarella
Chair, Senate Business and Labor Committee
Capitol Station
Helena, MT 59620

RE: SB 108

Dear Senator Cocchiarella:

I am part owner of Quality Transportation, Inc. a Montana based trucking company. I have been in trucking for 32 years. Over the years I have seen many ups and downs in the trucking industry in Montana, but the crisis we face today will affect all Montana Motor Carriers that lease owner/operators equipment. Many of the trucking companies in Montana lease owner/operators. Those owner/operators that meet all other Independent Contractor requirements need the ability to qualify for the exemption by allowing them to be exclusively leased under limited control as mandated by the Department of Transportation.

I would like to speak in support of SB 108, as I believe that the effect of SB 108 will help define the line between the Independent Contractor and the employer. The provisions for education of both parties in this bill will allow the parties to better define their roles in the contract and the carrier will know up front whether or not his contract meets DOL requirements for the IC status.

The Department of Transportation and the Interstate Commerce Commission support leasing trucks from Owner/Operators for numerous reasons. When a truck is leased to a specific carrier, the carrier is required to carry Liability Insurance on all the units, thus protecting the general public from owners that aren't insured or under insured. The carrier is responsible for background checks, training and various records keeping. All of this insures the general public and the Federal & State safety departments that owner/operators meet certain criteria. It is easier for the D.O.T. to go to one location and check 10 to 100 drivers or more for compliance, rather than individual owner/operators.

The owner/operator is still independent. He has to adhere to the Government regulations, but the carrier has responsibility to be knowledgeable of all the regulations and make sure the Owner/Operator is following the rules and regulations. The owner/operator owns his equipment, is free to set his delivery times, determines his own work schedule, the loads he carries, and purchases fuel & repairs his equipment when & where he chooses. The carrier is a necessary player in the transportation of goods and services. We are there to insure that all of our leased Owner/Operators are in compliance with Federal and State Legislation. If Owner/Operators are not allowed to be Independent Contractors, the safety of the industry would definitely drop as it would be impossible for the D.O.T. to do inspections on the Independent Owner/Operators on an individual basis.

Thanks for taking time to read my letter and your willingness to serve Montanan's in such a difficult situation.

Sincerely,

**DIVERSIFIED TRANSFER & STORAGE, INC.**

CONTRACT & COMMON CARRIER
FREIGHT FORWARDER
WAREHOUSING & LOGISTICS SERVICES

1540 MONAD ROAD • BILLINGS, MONTANA 59101-3200 • 406-245-4695 • FAX 406-245-5404 • www.dtsb.com

January 11, 2005

The Honorable Senator Vicki Cocchiarella
Chair, Senate Business and Labor Committee
Capitol Station
Helena, MT 59620

Senator Cocchiarella,

Please accept my comments as a proponent for SB108. As a Montana employer, it is vital a distinction is established for independent contractors versus employees. Diversified Transfer & Storage is a Montana corporation, primarily providing transportation and storage of food products for delivery throughout the United States and western Canada. We hire drivers that are company employees and contract with independent contractors.

Unfortunately the distinction of an independent contractor/owner operator versus a driver employee is fuzzy. SB108 will provide a means to qualify an owner operator/independent contractor through the independent contractor exemption certificate, eliminating confusion.

Thank you,



Jay Foley, President



**MOTOR CARRIER
MEMBER**



P.O. Box 546
Black Eagle, MT 59414
(406) 727-9924
(406) 727-9928 Fax



P.O. Box 1716
Auburn, WA 98071-1716
(253) 876-0837

Industrial Transfer & Storage Co., Inc.

January 10, 2005

The Honorable Senator Vicki Cocchiarella
Chair, Senate Business and Labor Committee
Capitol Station
Helena, MT 59620

Dear Senator Cocchiarella;

I am writing this letter today to comment on SB 108. I would like to point out in this correspondence the importance of Independent Contractors to the Motor Carrier Industry in the State of Montana.

Virtually every trucking company that is in operation today in the State of Montana, started as a single truck Independent Contractor. Many as Independent Contractors leased to motor carriers in compliance with Federal Motor Carrier Leasing Rules and Federal Motor Carrier Safety Administration (FMCSA) Safety Rules. As their knowledge of the Motor Carrier Industry grew through their Contractor Status with an existing motor carrier many chose to expand from a one truck operation and find their own niche in the industry. In the High Tech Industry this would be termed an "Incubator" for business and to the motor carrier industry in Montana that is very true and thus has been very beneficial to the total economy of the State of Montana.

There have been and still are many Independent Contractors that are satisfied with their situation as being an independent business person while still on long term lease to an established motor carrier and working within the Federal Motor Carrier Leasing Rules and the FMSCA Safety Rules as administered by the Motor Carrier. These people are important to the Motor Carrier Industry in Montana. The Motor Carrier Industry is a capitol intense industry and the Owner-Operator/Independent Contractor can help the motor carrier expand his business by having ownership of the most expensive piece of equipment in the business, that being the truck itself. This also spreads the economic base and benefits in the state as the Owner-Operator/Independent Contractor purchases his equipment, fuel, accessories and service from the vendor of his choosing, not just from the vendors of the motor carrier. Thus more vendors and or economic areas are impacted by spreading the purchasing power.

The Owner Operator/Independent Contractor impacts the Montana Motor Carrier Industry in another very positive way. The utilization of Owner-Operators/Independent Contractors provides for a shared responsibility for safety and efficiency of the Motor Carrier's operation. The Owner-Operator/Independent Contractor will have an investment of anywhere from \$20,000 to \$160,000 in his equipment, depending on the segment of the industry he is participating in and thus he strives to maintain his investment to extremely high standards resulting in safer equipment as well as safer operation of the equipment. The Owner-Operator/Independent Contractors equipment IS HIS BUSINESS, and he cannot afford unscheduled breakdowns or accidents that impair his ability to conduct HIS BUSINESS.

Our company Industrial Transfer & Storage Co, Inc. has utilized the services of Owner Operators/Independent Contractors since 1988. As a direct result of our utilization of the Owner-Operators/Independent Contractors our Company has posted a fleet safety record that is enviable of many in the Industry. Our Owner-Operators/Independent Contractors maintain their equipment to very strict safety standards and operate their equipment to the same exacting standards thus increasing the efficiency of our company while providing themselves a healthy bottom line in their business venture. The contribution to the states economy is significant as well. We currently have on contract Owner-Opertors/Independent Contractors that have replaced their truck tractors 4 or 5 times since contracting with us with the price of their equipment investment ranging from \$80,000 to \$118,000 each. This is not to mention the fuel, tires, accessories and service that they have purchased from vendors throughout the state of Montana. Our company and that if the various vendors could not have flourished without the services and spending power of these Owner-Operators/Independent Contractors.

As my final statement to the Committee, Madam Chairman, I would like to impress upon you and the other committee members that the Owner-Operator/Independent Contractor in the Motor Carrier Industry must be viewed and treated differently than Independent Contractors in any other industry. This difference is mandated by the previously referred to Federal Motor Carrier Leasing Rules (formerly administered by the ICC and now by the STB -Surface Transportation Board) and the FMCSA Safety Rules. These rules require a specific amount of control over the Owner-Operator/Independent Contractor in the furtherance of Public Safety and Environmental Safety for the State of Montana as well as the entire nation. Thus when considering the Independent Contractor Exemptions in SB 108 I respectfully request that a specific exemption and wording to such be stipulated in the language of the bill. This language should address the controls mandated by Federal as well as Montana State Law in regards to Motor Carrier operations.

These Owner-Operators/Independent Contractors must be exempted from employee status if the system and its economic and safety benefits to the State of Montana are to survive.

I apologize for not being able to be present for today's hearing but I have our annual insurance safety audit that was scheduled for today. It may be noted, that a percentage of the insurance premiums, which our Owner-Operators/Independent Contractors pay on their business equipment goes to our local insurance agent, Gould Agency in Great Falls to further that business and its employees.

Thank you for your consideration of this issue.

Ben E. Ives
President
Industrial Transfer & Storage Co, Inc.



MONTANA STATE SENATE

SENATE BUSINESS & INDUSTRY

+++++ WITNESS STATEMENT +++++

EXHIBIT NO. 9

DATE 1/11/05

ROLL NO. 5B106

NAME ALBERT McQuigan

ADDRESS P.O. Box 51 Thompson Falls, 5983

HOME PHONE: ⁽⁴⁰⁶⁾ 827-3370 WORK PHONE: SAME

REPRESENTING Self - Independent Cont.

APPEARING ON WHICH PROPOSAL ? 108 - 64

DO YOU: SUPPORT _____ OPPOSE X AMEND X

COMMENTS:

my - Independent Contractors Cert. 'Revoked'
(Testimonial History)

Putting me out of work
OR
Made to reveal private
information - not business
of Dept of LBR & IND

PLEASE LEAVE PREPARED STATEMENT WITH
COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS, LABOR, AND ECONOMIC AFFAIRS

Call to Order: By **CHAIRMAN VICKI COCCHIARELLA**, on January 20, 2005 at 9:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Vicki Cocchiarella, Chairman (D)
Sen. Joe Balyeat (R)
Sen. Duane Grimes (R)
Sen. Dave Lewis (R)
Sen. Glenn Roush (D)
Sen. Frank Smith (D)
Sen. Carolyn Squires (D)
Sen. Donald J. Steinbeisser (R)
Sen. Bill Tash (R)
Sen. Joseph (Joe) Tropila (D)

Members Excused:

Sen. Jon Tester (D)

Members Absent: None.

Staff Present: Annie Glover, Committee Secretary
Pat Murdo, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 192, 1/17/2005; SB 183,
1/17/2005
Executive Action: SB 183, SB 108, SB 188

Mr. Chris Christaens, Montana Landlord Association, Property
Managers

Opponents' Testimony: None

Informational Testimony: None

00:43:29

Questions from Committee Members and Responses:

00:47:24

Closing by Sponsor:

SEN. JOE BALLYEAT, SD 34, BOZEMAN entered.

00:47:56

EXECUTIVE ACTION ON SB 188

Motion: SEN. ROUSH moved that SB 188 DO PASS.

Discussion:

Motion/Vote: SEN. ROUSH moved that SB 188 BE AMENDED. Motion
carried unanimously.

EXHIBIT(bus15a06)

Motion/Vote: SEN. ROUSH moved that SB 188 DO PASS AS AMENDED.
Motion carried unanimously.

SEN. COCCHIARELLA proxied for SEN. SQUIRES.

SEN. GRIMES voted by proxy when he entered the meeting.

SEN. CAROLYN SQUIRES, SD 48, MISSOULA entered.

00:49:47

EXECUTIVE ACTION ON SB 108

Motion: SEN. LEWIS moved that SB 108 DO PASS.

Discussion:

EXHIBIT(bus15a07)

SEN. DUANE GRIMES, SD 39, CLANCY entered.

Motion/Vote: SEN. LEWIS moved that SB 108 BE AMENDED by
SB010805.apm. Motion carried unanimously.

Motion: SEN. BALYEAT moved that SB 108 BE AMENDED by
SB010804.apm.

EXHIBIT(bus15a08)

Discussion:

Mr. Jerry Keck, Department of Labor and Industry
Mr. Kevin Braun, Department of Labor and Industry
Mr. Webb Brown, Montana Chamber of Commerce
Mr. Jason Miller, Interim SB 270 Study Committee
Ms. Nancy Butler, Montana State Fund

Motion/Vote: SEN. BALYEAT moved that SB 108 BE AMENDED. Motion
failed 9-2 by voice vote with BALYEAT and STEINBEISSER voting
aye.

Motion/Vote: SEN. LEWIS moved that SB 108 DO PASS AS AMENDED.
Motion carried unanimously.

01:30:00

EXECUTIVE ACTION ON SB 183

Motion: SEN. STEINBEISSER moved that SB 183 DO PASS.

Discussion:

Motion/Vote: SEN. STEINBEISSER moved that SB 183 BE AMENDED by
SB018301.apm. Motion carried unanimously.

Motion/Vote: SEN. STEINBEISSER moved that SB 183 DO PASS AS
AMENDED. Motion carried unanimously.

01:31:50

Amendments to Senate Bill No. 108
1st Reading Copy

For the Senate Business, Labor, and Economic Affairs Committee

Prepared by Pat Murdo
January 20, 2005 (8:27am)

1. Title, page 1, line 16.

Following: "SECTIONS"

Strike: "15-30-201,"

2. Page 1, line 22.

Following: "contractor"

Insert: "and that an employer has an obligation to determine whether an individual is treated as an independent contractor or as an employee"

3. Page 1, line 24.

Following: "an employer"

Insert: "to coerce a worker to work as an independent contractor by offering"

4. Page 1, line 26 through line 27.

Following: "decision" on line 26

Strike: "identified" through "entity" on line 27

Insert: "affirmed the twin determinants of independent contractor status as being "A" issues of control and "B" whether the individual is in an independent business, commonly known as the "A-B" test, and emphasized the necessity of both factors being present, with performing work for other persons being an indication of an independent business"

5. Page 1.

Following: line 27

Insert: "WHEREAS, the concurring opinion in the Wild decision further suggested that the Department of Labor and Industry strengthen the certification process to provide a conclusive determination of independent contractor status; and"

6. Page 1, line 29.

Following: "community"

Insert: ", with employers and independent contractors coming together to propose a consensus solution after participating in a study required by Senate Bill 270, passed by the 58th

Legislature"

7. Page 2, line 9.

Following: "regularly"

Insert: "and customarily"

8. Page 2, line 11.

Following: "certificate"

Insert: "unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3"

9. Page 2, line 22.

Following: "(4)"

Insert: "(a)"

10. Page 2, line 24.

Strike: "(a)"

Insert: "(i)"

11. Page 2, line 26.

Strike: "(b)"

Insert: "(ii)"

12. Page 2.

Following: line 27

Insert: "(b) For the purposes of subsection (4)(a)(i), an endorsement required for licensure, as provided in 37-47-303, does not imply or constitute control."

13. Page 3, line 7.

Following: "(7)(a)"

Strike: "A conclusive" on line 7 through "certificate" on line 8.

Insert: "When the department approves an application for an independent contractor exemption certificate and the person is working under the independent contractor exemption certificate, the person's status is conclusively presumed to be that of an independent contractor"

14. Page 3, line 9.

Following: "(b) "
Strike: "If both" through "that the"
Insert: "A"

15. Page 3, line 11.
Following: "Montana"
Strike: ", precluding the person"
Insert: "and is precluded"

16. Page 3, line 12.
Following: "elected"
Strike: "coverage" through "39-71-401(3)"
Insert: "to be bound personally and individually by the
provisions of compensation plan No. 1, 2, or 3"

17. Page 3.
Following: line 12
Insert: "(c) For the purposes of the Workers' Compensation Act
and the Occupational Disease Act of Montana, a person is
working under an independent contractor exemption
certificate if:
(i) the person is performing work in the trade, business,
occupation, or profession listed on the person's independent
contractor exemption certificate; and
(ii) the hiring agent and the person holding the independent
contractor exemption certificate do not have a written or an oral
agreement that the independent contractor exemption certificate
holder's status with respect to that hiring agent is that of an
employee."

18. Page 4, line 12.
Following: "first"
Insert: ": (i) "

19. Page 4, line 13.
Following: "certificate"
Insert: "unless the individual is not required to obtain an
independent contractor exemption certificate pursuant to
[section 1(1)(a)]"
Following: " ; "
Insert: "or"

20. Page 4.
Following: line 13
Insert: "(ii) electing to be bound personally and individually by

the provisions of compensation plan No. 1, 2, or 3;"

21. Page 5, line 3 through page 7, line 13.

Strike: Section 4 in its entirety.

Renumber: subsequent sections

22. Page 17, line 19.

Following: "certificate"

Strike: "may waive"

Insert: "waives"

23. Page 17, line 20.

Following: "72"

Insert: ", unless the person has elected to be bound personally
and individually by the provisions of compensation plan No.
1, 2, or 3"

24. Page 22, line 12.

Following: "regularly"

Insert: "and customarily"

25. Page 24, line 12.

Following: "is an"

Strike: "exemption"

Insert: "exception"

- END -

Amendments to Senate Bill No. 108
1st Reading Copy

Requested by Senator Joe Balyeat

For the Senate Business, Labor, and Economic Affairs Committee

Prepared by Pat Murdo
January 19, 2005 (5:46pm)

1. Page 2, line 27.

Following: "documentation"**Strike:** "of that fact to the department"**Insert:** ", as provided in subsection (5) "

2. Page 2.

Following: line 27

Insert: "(5) To document that the applicant is engaged in an independently established business, trade, occupation, profession, or business, an applicant shall provide evidence to the department, in the form of a legible copy, of a combination of items equaling 15 points or more from the list in this subsection (5). The department may approve an item not on the list as documentation, and that item may have a value of no more than 1 point. The points are determined as follows:

(a) 7 points each for evidence of accounts for employees for workers' compensation, unemployment insurance, or business withholding tax payments. The department of revenue shall provide verification of this information to the department.

(b) 6 points each for:

(i) a memorandum of understanding or a contract that contains:

(A) the body of work to be performed;

(B) a description of payment, either complete or on the basis of the percentage of work completed;

(C) the ending date of the contract;

(D) liability for failure to complete the work;

(E) identification of the party or parties that provide materials and supplies; and

(F) the signatures of both parties to the memorandum of understanding or the contract;

(ii) a list of equipment or tools, with the approximate value;

(iii) a rental or lease agreement:

(A) for equipment or tools;

(B) indicating a business location;

(iv) a county document verifying payment of the business equipment tax;

- (v) a liability insurance policy;
- (vi) proof of bonding;
- (vii) a business property tax form;
- (viii) income tax supplemental schedules that indicate an independently established business;
- (ix) a trucking company lease agreement;
- (c) 3 points for each form 1099 filed with the internal revenue service, up to a maximum of 6 points;
- (d) 3 points for an advertisement of services in a newspaper, a telephone directory, on the internet, or in a professional list or a list of affiliations, up to a maximum of 6 points;
- (e) 3 points each for:
 - (i) a partnership agreement signed by all parties and providing information in the agreement of:
 - (A) the intent to form;
 - (B) the contribution by all parties;
 - (C) joint proprietary interest and the right of mutual control; and
 - (D) the share of each partner regarding profits and losses;
 - (ii) a business license or permit or for an application for a business license or permit;
 - (iii) a professional license;
 - (iv) a business structure licensed with the secretary or state;
 - (v) a name of business registered with the secretary of state;
 - (vi) an educational certification;
- (f) for two or more bids or estimates, 1.5 points for each bid or estimate, up to a maximum of 6 points;
- (g) 1.5 points for printed invoices, cards, brochures, or items of clothing indicating the business's name up to a maximum of 3 points;
- (h) 1.5 points each for:
 - (i) a federal employer identification number;
 - (ii) a business bank account;
 - (iii) a telephone bill in the name of the business;
 - (iv) a standard billing invoice;
- (i) 1.5 points for each type of advertising not specified in subsections (5)(d) and (5)(g), including:
 - (i) on a vehicle;
 - (ii) in a yard;
 - (iii) on a billboard;
 - (iv) on a bulletin board;
 - (v) on a corner lamp post; or
 - (vi) on a flyer.

Renumber: subsequent subsections

3. Page 3, line 9.

Following: "subsection"

Strike: "(7) (a) "

Insert: "(8) (a) "

4. Page 4, line 8.

Strike: "[section 1(9)]"

Insert: "[section 1(10)]"

- END -

**MONTANA SENATE
2005 LEGISLATURE**

ROLL CALL

BUSINESS AND LABOR

DATE 1/20/05

NAMES	PRESENT	ABSENT	EXCUSED
SEN. VICKI COCCHIARELLA, CHAIRWOMAN	X		
SEN. JOE BALLYEAT	X		
SEN. DUANE GRIMES	X		
SEN. DAVE LEWIS	X		
SEN. GLENN ROUSH	X		
SEN. FRANK SMITH	X		
SEN. CAROLYN SQUIRES	X		
SEN. DONALD STEINBEISSER	X		
SEN. BILL TASH	X		
SEN. JON TESTER			X
SEN. JOE TROPILA	X		
PAT MURDO, LSD			
ANNIE GLOVER, COMMITTEE SECRETARY			

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By **CHAIRMAN MIKE COONEY**, on February 9, 2005 at
5:00 P.M., in Room 317 Capitol.

ROLL CALL

Members Present:

Sen. Mike Cooney, Chairman (D)
Sen. Keith Bales (R)
Sen. Gregory D. Barkus (R)
Sen. John Brueggeman (R)
Sen. John Cobb (R)
Sen. John Esp (R)
Sen. Steven Gallus (D)
Sen. Ken (Kim) Hansen (D)
Sen. Bob Hawks (D)
Sen. Bob Keenan (R)
Sen. Rick Laible (R)
Sen. Lane L. Larson (D)
Sen. Greg Lind (D)
Sen. Don Ryan (D)
Sen. Trudi Schmidt (D)
Sen. Corey Stapleton (R)
Sen. Dan Weinberg (D)
Sen. Carol Williams (D)

Members Excused:

Sen. Jon Tester (D)

Members Absent: None.

Staff Present: Prudence Gildroy, Committee Secretary
Taryn Purdy, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 228, 2/4/2005; SB 5, 2/4/2005;
SB 108, 2/4/2005; SB 233, 2/4/2005;
SB 41, 2/4/2005
Executive Action: SB 41; SB 108; SB 233; SB 288; SB
5; SB 126

Licensing and certification have been in effect for about 12 years and a number of people were grand-fathered in. Since that time, the Board has had no interaction with many of those people. They have no way of tracking whether or not a mentor is actually qualified and doing their reports in accordance with all the requirements.

SEN. SCHMIDT asked **SEN. HANSEN** if he tried to negotiate this before bringing the bill to the Legislature. **SEN. HANSEN** said he talked to the Board last summer and was primarily dealing with the 100-mile radius at that time. The Board was not willing to change the rule. He asked **SEN. DAVE LEWIS** to address some of the questions.

SEN. SCHMIDT asked **SEN. LEWIS** if he had anything to add. **SEN. LEWIS** advised in the Business and Labor Committee, **SEN. VICKI COCCHIARELLA** assigned him and **SEN. SCHMIDT** to meet with the Board. The Board chair met with them and said they would take a look at the 100-mile limit at their March 6 Board meeting. The other issue was about an appraiser taking on more than two trainees and the Board was not quite as enthusiastic. They reported back to the committee and had long executive sessions on the bill. They moved the bill with the understanding that the Board would be meeting later and there could be some modifications in the rules that might address some of the concerns. The majority of the committee thought they were better off to move the bill along and once it went to the House the Board would have had a chance to meet and they could take another look at what might be needed. There was strong discussion on tabling the bill and there was a close vote at one point and finally the 11-0 vote to move the law and make sure there was some progress made at the Board meeting.

Closing by Sponsor:

SEN. HANSEN closed on the bill. He hoped this could be sent back to the Senate.

HEARING ON SB 108

{Tape: 1; Side: B; Approx. Time Counter: 23.5 - 30}

Opening Statement by Sponsor:

SEN. DAVE LEWIS (R), SD 42, Helena, opened the hearing on **SB 108**, Revise laws governing independent contractors.

SEN. LEWIS advised the bill was debated excessively on the floor. It was the result of work done by an interim committee to come up

with a fix due to a Supreme Court decision that threw out the independent contractor provision. The fiscal note reflects the fact that the Department has the authority to set up an audit program to follow up on the certification process. The audit process is critical to making sure this works. Addressing the cap issue, **SEN. LEWIS** stated the bill is effective on passage and approval. A fairly large portion of this could be placed into a supplemental with language allowing any excess spending authority be carried forward into the subsequent biennium. He did not think that lowering the numbers was realistic in order to do the job of developing and administering a credible independent contractor certification process. He indicated there was a new fiscal note with a minor change in the assumptions.

Proponents' Testimony:

Jerry Keck, Department of Labor, reported the Department was charged with convening a subcommittee to deal with the independent contractor issues. The committee met for five day-long meetings with sixteen representatives from the various stakeholders in the independent contractor issue. The bill is the result of the consensus of that whole group. The fiscal note is a reflection of what that group believed was necessary to implement their proposals in the bill and to have a credible enforcement program that could withstand scrutiny of another legal challenge to the Montana Supreme Court. There were six new FTE's in the bill including one additional staff person in the Helena office to do the increased documentary review prior to issuing an independent contractor exemption. There would be five auditors in the field. The second piece of the bill was the need for a proactive and visible education program. **SEN. STAPLETON** asked if there was significant variation between the new fiscal note and the one the committee had. **Mr. Keck** indicated the difference in the fiscal note is the budget analyst looked at the number of 812,000 and made the assumption the fee could be less than \$100. The group favored a fee of \$125 because the current cost of the independent contractor program is \$360,000. With the added cost, it is slightly more than \$1.2 million. This assumes 10,000 applicants. The final piece was a web-based application and database system of those currently certified. That would be a one-time only appropriation for the biennium.

{Tape: 2; Side: A}

Dave Cogley, Cogley, Building Contractor, testified he served on the committee. He stated he has held the independent contractor exemption since he started building in 1979. When the certification was passed in 1983, he obtained a certificate at that time. He believed the exemption was very important. He

said he insures himself with a general, broader type of insurance coverage and to have another layer of work related coverage is not financially feasible. The exemption is also important to those who contract with him to do work. They need to know he is truly an independent contractor, and they don't have to worry about coverage for him as an employee. That was why the certification process was passed in 1983. Certainty for everybody involved is needed, he declared. When the Supreme Court decision tossed out the conclusive presumption part, that threw everything in limbo. This bill is intended to re-establish conclusive presumption, and it will cost money to have a credible certification process that the court will respect. He indicated he fully supports the fiscal note and the added cost. Compared to mandatory work comp, it's cheap.

Cary Hegreberg, Montana Contractors' Association, strongly supported the bill in it's current form. About thirty of their member companies have pulled together in a self-funded workers compensation trust. Because of the Supreme Court decision, these thirty companies have imposed upon themselves a mandate that every single person who shows up on every single one of their job sites as general contractors must have workers compensation insurance, regardless of whether or not they hold the Independent Contractor Certificate. They believe, as it now stands, they are too vulnerable to allow that kind of liability to occur on their job sites. **Mr. Hegreberg** held the two options were to have a legitimate, credible independent contractor exemption such as the one contemplated in this bill, or move to mandatory work comp for everyone. They see the bill as a compromise, but they understand there has to be a level of bureaucracy.

Informational Testimony: None.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. LEWIS closed on the bill.

HEARING ON SB 233

{Tape: 2; Side: A; Approx. Time Counter: 6 - 13.4}

Opening Statement by Sponsor:

followed the intent of the committee and provided clarification. He thought it would make it easier, should circumstances occur again, to prioritize in the future.

Closing by Sponsor:

SEN. KEENAN did not think this bill would hamstring the creativity of the subcommittee. He advised the bill is the Legislature's bill.

SEN. STAPLETON relinquished the chair to **CHAIRMAN COONEY**.

EXECUTIVE ACTION ON SB 41

{Tape: 2; Side: A; Approx. Time Counter: 25.3 - 26.7}

Motion: **SEN. LAIBLE** moved that SB 41 DO PASS.

Motion: **SEN. COBB** moved that the AMENDMENT BE ADOPTED.

SEN. KEENAN noted these amendments were drafted by DPHHS at his request and would need editing and proofing. He said any changes would not be substantial and would be incorporated into the bill for second reading.

Vote: Motion carried unanimously by voice vote.

Motion/Vote: **SEN. COBB** moved that SB 41 DO PASS AS AMENDED. Motion carried unanimously by voice vote. **SEN. GALLUS**, **SEN. RYAN**, and **SEN. TESTER** voted aye by proxy.

EXECUTIVE ACTION ON SB 108

{Tape: 2; Side: A; Approx. Time Counter: 26.9 - 30.9}

Motion: **SEN. KEITH BALES** moved that SB 108 DO PASS.

Discussion:

SEN. GREG BARKUS said it was his understanding these bills were brought back to committee out of concern for the spending cap. **CHAIRMAN COONEY** advised they decided, after a conversation with **SEN. JOE BALLYEAT**, to send some of these bills across to the House. Those that survive will then be captured by the House Appropriations Committee. The House will send their bills to the Senate, and those that survive with special revenue or general fund, will be captured by the Senate Finance Committee. He said

he spoke to **SEN. KEENAN** about it, and it seemed to be a plan that would work well.

SEN. HAWKS advised there was testimony that the fiscal note might be understated. **CHAIRMAN COONEY** said a new fiscal note had been requested and signed by **SEN. LEWIS** and they would get a copy. The anticipated change would be the \$125 fee for the application.

Vote: Motion carried 17-2 by voice vote with **SEN. ESP** and **SEN. KEENAN** voting no. **SEN. GALLUS**, **SEN. RYAN**, and **SEN. TESTER** voted aye by proxy.

EXECUTIVE ACTION ON SB 233

{Tape: 2; Side: A; Approx. Time Counter: 31.0 - 31.7}

Motion/Vote: **SEN. WILLIAMS** moved that SB 233 DO PASS. Motion carried 18-1 by voice vote with **SEN. ESP** voting no. **SEN. GALLUS**, **SEN. RYAN**, and **SEN. TESTER** voted aye by proxy.

EXECUTIVE ACTION ON SB 288

{Tape: 2; Side: A; Approx. Time Counter: 31.8}

Motion: **SEN. KEENAN** moved that SB 288 DO PASS.

Discussion:

SEN. BARKUS inquired about a fiscal note.

{Tape: 2; Side: B}

CHAIRMAN COONEY advised there is no fiscal note. The bill puts parameters on how INTERCAP loans can be used as the result of an audit.

Vote: Motion carried unanimously by voice vote. **SEN. GALLUS**, **SEN. RYAN**, and **SEN. TESTER** voted aye by proxy.

EXECUTIVE ACTION ON SB 5

{Tape: 2; Side: B; Approx. Time Counter: 0.5 - 13.7}

Motion: **SEN. COBB** moved that SB 5 DO PASS.

Discussion:

MONTANA SENATE 2005 LEGISLATURE

ROLL CALL

FINANCE AND CLAIMS COMMITTEE

DATE 2-9-05

NAMES	PRESENT	ABSENT	EXCUSED
SEN. MIKE COONEY, CHAIR	X		
SEN. MIKE COONEY			
SEN. KEITH BALES	X		
SEN. GREGORY BARKUS	X		
SEN. JOHN BRUEGGEMAN	X		
SEN. JOHN COBB	X		
SEN. JOHN ESP	X		
SEN. STEVE GALLUS	X		
SEN. KEN HANSEN	X		
SEN. BOB HAWKS	X		
SEN. BOB KEENAN	X		
SEN. RICK LAIBLE	X		
SEN. LANE LARSON	X		
SEN. GREG LIND	X		
SEN. DON RYAN	X		X
SEN. TRUDI SCHMIDT	X		
SEN. COREY STAPLETON	X		
SEN. JON TESTER			X
SEN. DAN WEINBERG	X		
SEN. CAROL WILLIAMS	X		
TARYN PURDY, LSD	X		
PRUDENCE GILDROY, COMMITTEE SECRETARY	X		

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JIM KEANE**, on March 10, 2005 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Jim Keane, Chairman (D)
Rep. Kathleen Galvin-Halcro, Vice Chairman (D)
Rep. Joe McKenney, Vice Chairman (R)
Rep. Elsie Arntzen (R)
Rep. Bob Bergren (D)
Rep. Tim Dowell (D)
Rep. Kevin T. Furey (D)
Rep. Llew Jones (R)
Rep. Mike Jopek (D)
Rep. Harry Klock (R)
Rep. Scott Mendenhall (R)
Rep. Mike Milburn (R)
Rep. Don Roberts (R)
Rep. Wayne Stahl (R)
Rep. Dan Villa (D)
Rep. Jonathan Windy Boy (D)

Members Excused:

Rep. Dave Gallik (D)
Rep. Ralph Heinert (R)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Kyanne Kelly, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 388, 3/7/2005; SB 108, 3/7/2005;
SB 217, 3/7/2005; SB 454, 3/7/2005
Executive Action: HB 654

HEARING ON SB 388

Opening Statement by Sponsor:

SEN. BOB KEENAN (R), SD 5, opened the hearing on **SB 388**, Restrict insurer from steering customer to certain auto repair shops.
00:02:19

Proponents' Testimony:

00:05:19 John Morrison, State Auditor
00:09:27 **REP. JON SONJU, HD 7, KALISPELL**
00:14:59 Gene Dziza, Auto Body Shop Owner

EXHIBIT(buh53a01)

00:22:21 Mark Pollock, Auto Body Shop Owner
00:25:11 Darr Riggert, Auto Body Shop Owner
00:27:27 Dusty Dziza, Collision Craft

EXHIBIT(buh53a02)

00:28:12 Max Yates, Montana Collision Repair Specialist
00:28:30 Dan Shewalter, Whitefish Auto Body
00:28:51 Shawn Basolo, Body Shop Owner

Opponents' Testimony:

00:29:14 Greg Van Horssen, State Farm Insurance
00:35:24 Lloyd Taylor, Great Falls Collision Repair

EXHIBIT(buh53a03)

00:39:48 Dwight Easton, Farmers Insurance Company
00:42:05 Larry Kibbee, Property Casualty Insurance

Informational Testimony: None

Questions from Committee Members and Responses:

00:44:44

Closing by Sponsor:

01:25:34

REPS. HEINERT AND GALLIK entered the room.

HEARING ON SB 108

Opening Statement by Sponsor:

SEN. DAVE LEWIS (R), SD 42, opened the hearing on **SB 108**, Revise laws governing independent contractors.

01:26:26

Proponents' Testimony:

01:35:01 Keith Kelly, Department of Labor and Industry

EXHIBIT(buh53a04)

01:37:52 Jerry Keck, Department of Labor and Industry

EXHIBIT(buh53a05)

01:41:59 Kevin Braun, Department of Labor and Industry

01:50:24 Dave Ccgly, Building Contractor

EXHIBIT(buh53a06)

01:53:49 Jason Miller, United Brotherhood of Carpenters

01:56:32 Cary Hegreberg, Montana Contractors Association

01:57:40 Shawn Bubb, Montana School Boards Association

01:59:53 Riley Johnson, National Federation of Independent
Business

02:01:29 Spook Stang, Motor Carriers Association

02:02:49 Barbara Ranf, Montana Chamber of Commerce

02:03:09 Jason Todhunter, Logging Association

02:03:33 Nancy Butler, Montana State Fund

02:03:55 Byron Roberts, Building Industry Association

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

02:04:39

Closing by Sponsor:

02:20:55

HEARING ON SB 217

Opening Statement by Sponsor:

SEN. LANE LARSON (D), SD 22, opened the hearing on **SB 217**, Revise apprentice training laws.

02:41:38

EXHIBIT(buh53a07)

HOUSE OF REPRESENTATIVES
Roll Call
BUSINESS AND LABOR COMMITTEE

DATE 3-10-05

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. JIM KEANE, CHAIR.	✓		
REP. KATHLEEN GALVIN-HALCRO, VICE CHAIR	✓		
REP. JOE MCKENNEY, VICE CHAIR	✓		
REP. ELSIE ARNTZEN	✓		
REP. BOB BERGREN	✓		
REP. TIM DOWELL	✓		
REP. KEVIN FUREY	✓		
REP. DAVE GALLIK			✓
REP. RALPH HEINERT			✓
REP. LLEW JONES	✓		
REP. MIKE JOPEK	✓		
REP. HARRY KLOCK	✓		
REP. SCOTT MENDENHALL	✓		
REP. MIKE MILBURN	✓		
REP. DON ROBERTS	✓		
REP. WAYNE STAHL	✓		
REP. DAN VILLA	✓		
REP. JONATHAN WINDY BOY	✓		

EXHIBIT 4
DATE 3.10.05
SB 108

HOUSE BUSINESS AND LABOR COMMITTEE
Testimony in Favor of SB 108
Hearing on March 10, 2005

MEMBERSHIP LIST OF SB 270 (2003 SESSION) ADVISORY COMMITTEE

Webb Brown	Montana Chamber of Commerce
Nancy Butler	Montana State Fund
Dave Cogley	Wildwood Log Homes
Jerry Driscoll	Montana State AFL-CIO
Cary Hegreberg	Montana Contractors Association
Larry Jones	Liberty Northwest Insurance
Riley Johnson	National Federation of Independent Business
Jerry Keck	Montana Department of Labor and Industry
Jacqueline Lenmark	American Insurance Association (AIA)
Larry Mayo	Montana Building Trades Council
Jason Miller	Pacific Northwest Regional Council of Carpenters
Jim Nys	Personnel Plus
Byron Roberts	Montana Building Industry Association
Carl Schweitzer	American Subcontractors Association of Montana
Brain Smith	Montana Motor Carriers Association
Bob Worthington	Montana Municipal Insurance Authority

Independent Contractor Exemptions A Final Report on Senate Bill 270

EXECUTIVE SUMMARY

Since 1984 the Department of Labor and Industry has been issuing independent contractor (IC) exemptions. Over time, many changes have occurred both legislatively and procedurally to the exemption process. Until very recently, the exemptions have been held by the Workers' Compensation Court to be conclusive as to the status of an independent contractor. The Montana Supreme Court in Kelly Wild v. Fregein Construction threw out the conclusive nature of the exemptions in 2003. In this decision, the Court found that the exemptions were not conclusive. The court said an employer must make an initial good faith inquiry to determine the worker meets the control and independently established business tests before employing the worker as an IC.

With the Wild case disrupting the original legislative intent of the exemption process, the 59th legislature passed SB 270. The bill required the Department of Labor and Industry to establish a committee to study and make recommendations regarding the issues relating to independent contractors.

The question of whether an individual is an independent contractor or an employee is a complex one that is driven by the facts in each individual case. An independent contractor is defined in Montana law as "one who renders service in the course of an occupation and (a) has been and will continue to be free from control or direction over the performance of the services, both under contract and fact; and (b) is engaged in an independently established trade, occupation, profession or business". This is commonly referred to as the AB test.

As part of its deliberation, the SB 270 independent contractor study committee recognized that there is a real need for processes that ensure a degree of certainty in determining whether the working relationship is one of employer to employee, or hiring agent to independent contractor. The committee further agreed that whatever the outcome, there is a need for all parties to fully understand their respective rights and responsibilities under the law, and under contract. To the extent the Department of Labor and Industry can facilitate this understanding and bring some certainty to the relationship it should do so. The recommendations summarized in this report endeavor to assist the department and the legislature in accomplishing those objectives.

In reaching its recommendations, and ultimately a legislative proposal to carry out its recommendations, the committee relied on a variety of data and input. This included a report commissioned by the Department of Labor and Industry and prepared by Hays Companies of Minneapolis Minnesota. The report titled "Independent Contractor Best Practices" formed the basis for much of the initial discussion. Among data in the report was information indicating that Montana has the highest percentage of independent contractors (8%) as a percentage of the total workforce than any other state that registers

There is no page 2 for
Exhibit 5 online.

The Historical Society may
have it as part of the original
exhibit.

- **The department should provide education to independent contractors, hiring agents, and employees as to their rights and responsibilities.** The committee believes that because this area of the law is so complex and because there are so many situations that could be prevented before they happen, an education program is a vital component in bringing needed stability to this area of the law. The committee believes that a designated portion of the registration fee needs to be specifically allocated for this purpose. As part of the education process the Department should provide a sample contract that could be used by the contracting parties to define the independent relationship.
- **The cost of the exemption should be increased in order to support enhanced enforcement and education efforts.** The committee believes that the current charge for exemption is so minimal that it could not begin to support the recommended changes. An increase, determined through administrative rule, and with the necessary legislative guidance, would be a small price to pay to bring stability, certainty, and fairness to the business and worker community.
- **The legislature should provide penalties for violations of law consistent with the recommendations of this committee.** The committee believes that in addition to meaningful exemption review and investigative capabilities, the department needs the ability to assess fines against those hiring agents and independent contractors who abuse the exemption process.
- **To the extent possible, the department should implement objective standards – a point system – as soon as practical to assist in determining whether applicants are engaged in independently established businesses.** Ultimately the committee recognized that the traditional AB test needed to remain a part of the statute. The committee also recognized that of those two prongs, the B portion is the easier to evaluate and measure. An objective point system known to applicants and the Department alike, will meaningfully measure if applicants are truly engaged in an independently establish business. This will leave the Department with the ability to concentrate its resources on education and enforcement efforts, with a focus on those who are not registered and providing information on what it means to be free from direction and control, the A prong of the exemption criteria.

The SB 270 Study Committee presented these recommendations and draft proposed legislation to the Economic Affairs Interim Committee on September 7, 2004. Members of the Study Committee testified in support of the proposed legislation as a means of addressing the issues regarding independent contractors. Following discussion of the recommendations, the Economic Affairs Interim Committee unanimously approved the motion to adopt the SB 270 Study Committee draft proposed legislation as an EAIC committee bill.

TESTIMONY IN SUPPORT OF SB 108
Dave Cogley, General Building Contractor
Wildwood Log Homes
March 10, 2005

Mister Chairman, members of the committee, my name is Dave Cogley. I am a general building contractor, working locally here in the Helena area since 1978. I have always operated as a sole proprietor and have chosen to carry general health insurance on myself and my family, which as opposed to workers compensation insurance applies 24 hours a day for all illnesses and injuries. I don't feel as a practical matter that I need to also carry the more limited workers compensation insurance on myself, and therefore have utilized the independent contractor (IC) exemption the law provides since I began my business. I feel very strongly that as a business person I should have the right to determine how I cover myself, and not be forced into a system designed to protect employees as opposed to self-employed persons. Both types of insurance are too expensive to be considered casually.

But the statutory IC exemption process has always been wrought with questions and misunderstanding as to who is a legitimate independent contractor. Before 1983 a person's status as an IC was determined after an injury occurred. In order to provide more certainty for the parties as to where the liability for any potential work injury would lay, a certification process was adopted by the legislature that year to predetermine IC status. The statute stated that the certificate, once issued by the Department of Labor and Industry, would be conclusive and would bar any subsequent claims by the certificate holder for workers compensation. However, due to a screening process that became increasingly lax and also to a lack of education of the industry and the public regarding the exemption, problems persisted with knowing who was a legitimate independent contractor and what were the responsibilities of each party. Because of abuses and ongoing concerns with the IC process, particularly in the construction industry, legislation was introduced in both 1991 and 1993 to eliminate the exemption for workers in that industry, and make work comp coverage mandatory. That legislation failed then, but as we discussed in the advisory committee, if the status of an IC relationship cannot be established conclusively at the time of engaging the IC to perform work, then mandatory coverage may be the only answer. Some groups are requiring this now as a result of the Wild decision.

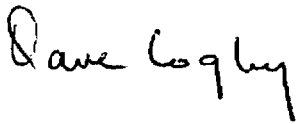
I believe SB 108 addresses the concerns expressed by the court with the present certification process, by beefing up the screening, enforcement, and audit authority of the department and providing for a meaningful process. It will not be difficult for anyone who is truly operating independently to obtain certification. This legislation also provides for an education component wherein independent contractors and those engaging independent contractors will better understand the responsibilities of each in entering into and maintaining that relationship. It defines penalties that can be used to encourage compliance and discourage fraud. It also addresses the concern expressed by

the court as to how this exemption fits with the general policy statement of the workers compensation act and the non-waiver provisions of that act.

Some may object to the increased authority of the department under this bill, and the increased cost of the program. The committee was very mindful of these concerns, and fashioned the process to be as simple as possible but yet be effective. I feel the benefits of having a conclusive certification process fully justify the extra cost and regulation. Further, if the alternative is mandatory coverage, then the cost is cheap by comparison.

I urge the committee to act favorably on SB 108. Thank you.

Dave Cogley

A handwritten signature in cursive script that reads "Dave Cogley". The signature is written in dark ink and is positioned below the printed name.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JIM KEANE**, on March 11, 2005 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Jim Keane, Chairman (D)
Rep. Joe McKenney, Vice Chairman (R)
Rep. Elsie Arntzen (R)
Rep. Bob Bergren (D)
Rep. Tim Dowell (D)
Rep. Kevin T. Furey (D)
Rep. Dave Gallik (D)
Rep. Ralph Heinert (R)
Rep. Mike Jopek (D)
Rep. Harry Klock (R)
Rep. Scott Mendenhall (R)
Rep. Mike Milburn (R)
Rep. Don Roberts (R)
Rep. Wayne Stahl (R)
Rep. Dan Villa (D)
Rep. Jonathan Windy Boy (D)

Members Excused:

Rep. Kathleen Galvin-Halcro, Vice Chairman (D)
Rep. Llew Jones (R)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Kyanne Kelly, Committee Secretary

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: SB 130, 3/7/2005; SB 354, 3/7/2005;
SB 203, 3/7/2005; SB 316, 3/7/2005
Executive Action: SB 130, SB 316, SB 454, SB 64, SB
108, SB 165

HEARING ON SB 130

Opening Statement by Sponsor:

SEN. DON RYAN (D), SD 10, opened the hearing on **SB 130**, Revise microbusiness development program.
00:02:08

Proponents' Testimony:

00:04:25 Andy Poole, Department of Commerce
EXHIBIT(buh54a01)

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

00:06:38

HEARING ON SB 354

Opening Statement by Sponsor:

SEN. STEVEN GALLUS (D), SD 37, opened the hearing on **SB 354**, Ban credit scoring in property and auto insurance.
00:07:00

Proponents' Testimony:

00:13:43 Betty Beverly, Senior Citizen Association
00:17:26 Harris Himes, Montana Family Coalition
00:18:01 Mike Gallus, CPA from Butte

Opponents' Testimony:

00:20:14 Frank Cote, Farmers Union Insurance
00:27:03 Roger McGlenn, Independent Insurance Agents
00:29:34 Brian Coleman, Farmers Agent from Helena

Informational Testimony: None

Vote: Motion carried 17-1 by voice vote with REP. GALLIK voting no. REP. KATHLEEN GALVIN-HALCRO voted by proxy.

Motion: REP. MCKENNEY moved that SB 64 BE CONCURRED IN AS AMENDED.

Discussion:
02:53:58

Vote: Motion carried 17-1 by voice vote with REP. GALLIK voting no. REP. KATHLEEN GALVIN-HALCRO voted by proxy. REP. MILBURN to carry.

EXECUTIVE ACTION ON SB 108

Motion: REP. MCKENNEY moved that SB 108 BE CONCURRED IN.

Discussion:
02:55:14

Vote: Motion carried unanimously by voice vote. REP. KATHLEEN GALVIN-HALCRO voted by proxy. REP. MCKENNEY to carry.

EXECUTIVE ACTION ON SB 165

Motion: REP. BERGREN moved that SB 165 BE CONCURRED IN.

Discussion:
02:59:46

Vote: Motion carried 16-2 by voice vote with REP. GALLIK and REP. GALVIN-HALCRO voting no. REP. KATHLEEN GALVIN-HALCRO voted by proxy. REP. DOWELL to carry.

HOUSE OF REPRESENTATIVES
Roll Call
BUSINESS AND LABOR COMMITTEE

DATE 3.11.05

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. JIM KEANE, CHAIR.	✓		
REP. KATHLEEN GALVIN-HALCRO, VICE CHAIR			✓
REP. JOE MCKENNEY, VICE CHAIR	✓		
REP. ELSIE ARNTZEN	✓		
REP. BOB BERGREN	✓		
REP. TIM DOWELL	✓		
REP. KEVIN FUREY	✓		
REP. DAVE GALLIK	✓		
REP. RALPH HEINERT	✓		
REP. LLEW JONES			✓
REP. MIKE JOPEK	✓		
REP. HARRY KLOCK	✓		
REP. SCOTT MENDENHALL	✓		
REP. MIKE MILBURN	✓		
REP. DON ROBERTS	✓		
REP. WAYNE STAHL	✓		
REP. DAN VILLA	✓		
REP. JONATHAN WINDY BOY	✓		

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON APPROPRIATIONS

Call to Order: By **CHAIRMAN ROSALIE (ROSIE) BUZZAS**, on April 4, 2005 at 3:30 P.M., in Room 102 Capitol.

ROLL CALL

Members Present:

Rep. Rosalie (Rosie) Buzzas, Chairman (D)
Rep. John E. Witt, Vice Chairman (R)
Rep. Tim Callahan (D)
Rep. Eve Franklin (D)
Rep. Bill E. Glaser (R)
Rep. Ray Hawk (R)
Rep. Cynthia Hiner (D)
Rep. Verdell Jackson (R)
Rep. Christine Kaufmann (D)
Rep. Walter McNutt (R)
Rep. John L. Musgrove (D)
Rep. Jon C. Sesso (D)
Rep. John Sinrud (R)
Rep. Janna Taylor (R)

Members Excused: None.

Members Absent: Rep. Carol C. Juneau, Vice Chairman (D)
Rep. Joey Jayne (D)
Rep. Ralph L. Lenhart (D)
Rep. Penny Morgan (R)
Rep. Rick Ripley (R)
Rep. Jack Wells (R)

Staff Present: Marcy McLean, Committee Secretary
Jon Moe, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 108, 3/30/2005; SB 274,
3/30/2005; SB 498, 3/30/2005

**{Tape: 1; Side: A; Approx. Time Counter: 4.6 - 9.8; Comments:
Rep. Lenhart entered hearing.}**

Steve Turkiewicz, Montana Bankers Association, urged a "do concur" on SB 274.

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. KAUFMANN asked about he revised fiscal note. **SEN. BARKUS** said that he has not yet signed the fiscal note, but knows it is prepared. He said that it will show for FY06 revenue of \$83,000 with \$54,000 expenditure, and FY07 revenue of \$56,000 and expenditure of \$59,000.

REP. MORGAN asked, in referring to the three FTEs in the fiscal note, why the Banking Examiner Board couldn't handle this function. **Annie Goodwin** said that the revised fiscal note is for one FTE. The Banking Examiner Board is exclusively responsible for chartering new banks and is made up of lay people. The current examiners are specialized in either banking, trust, consumer finance, or mortgage lending; these examiners would need an intense amount of training in order to enforce this law. Two examiners currently are specialized for mortgage brokers; the additional FTE in SB 247 will oversee the licensing of 200 mortgage bankers.

Closing by Sponsor:

SEN. BARKUS asked the Committee for a "do concur."
{Tape: 1; Side: A; Approx. Time Counter: 9.8 - 16.8}

HEARING ON SB 108

Opening Statement by Sponsor:

SEN. DAVE LEWIS, SD 42, Helena, opened the hearing on **SB 108**, a bill to revise laws governing certification of independent contractors. He said that he has presented this bill six different times, and would focus today on the fiscal impact. For the past several years, the Department of Labor (DOL) has been certifying independent contractors. By having this certification, the contractor could make the choice of whether or not they wanted to purchase workers compensation insurance. The employer did not have to workers compensation to a certified independent contractor. This was eventually challenged in court and the Montana Supreme Court ruled that it was an inappropriate

certification and ruled that the employer needed to provide the insurance. They said that independent contractor certifications need to be done more thoroughly, and the DOL should do follow up audits of these contractors. If not, then they need to be provided workers compensation just like any other employee. The fiscal note shows that the fees (\$125 biennially) charged for certification will generate the revenue necessary to cover the DOL's expenses. An amendment to HB 2 would place money there, contingent upon passage of SB 108.

Proponents' Testimony:

Keith Kelly, DOL Commissioner, said that SB 247 is a result of the work of the 2003 Advisory Committee, which includes representatives from government and businesses. He said that it is important to the 30,000 independent contractors, organized labor and workers compensation insurers. It will return certainty and fairness to the independent contractor exemption certificate, so that all parties involved can depend upon the authenticity of the certificate.

EXHIBIT(aph71a01)

Jerry Keck, DOL, said that his department implements the independent contractor certification program. The interim Advisory Committee wanted to continue to maintain the certification program in order to exempt these contractors from the Workers Compensation Act. They also wanted a comprehensive education program that would inform everyone involved as to what is means to be free from direction and control. He said that everyone needs to know that is certainty to the certificate and that they can count on it to be accurate. SB 108 would establish a stricter review of the initial application, a Web-based data program would be developed, a comprehensive education program, and six auditors to verify the independent business nature and control standards.

Dave Cogley, Helena, said that he is both an independent contractor and an employer of independent contractors. Being self-employed, he chooses to carry general health insurance for himself and his family, as opposed to paying for workers compensation insurance. As a self-employed business person, he said he should not be forced to provide workers compensation for the independent contractors he hires. He said that SB 108 is vital to the construction industry, because it provided needed protection both for the person employing the independent contractor and the independent. He said that the cost of the program is justified because of the certainty that it gives to the public. If they do not have this legislation, they would probably be looking at mandatory workers compensation coverage.

Cory Hegreberg, Montana Contractors Association, Montana Motor Carriers, Montana Logging Association, said that all three associations were participants in the interim study and support SB 108. The Montana Contractors Association maintains a self-insurance workers compensation risk pool. He said that since the lawsuit, the self-insurance risk has become too high. The Supreme Court decision has mandated that every person on a job site must be covered by workers compensation insurance. Therefore, the independent contractor certification as it now exists, is useless. Until SB 108 passes and the certification process is deemed enforceable and credible, the trustees of the self-insurance pool will continue to require that all employees be covered.

{Tape: 1; Side: A; Approx. Time Counter: 16.8 - 32.6; Comments: End of Side A}

Barb Ranf, Montana Chamber of Commerce, said that this is an incredibly important bill and the funding is justified.

Nancy Schlepp, Montana Farm Bureau Federation, said that people in agriculture often use independent contractors and feel that this is an important bill.

Riley Johnson, National Federation of Independent Business, said that they participated on the interim committee. He said that SB 108 would cover many types of businesses, not just construction.

Harold Blattie, Montana Association of Counties, urged passage of the bill.

The following people rose to express support for SB 108:

Byron Roberts, Montana Building Industry Association
Jason Miller, United Brotherhood of Carpenters
Bob Worthington, Montana Municipal Insurance Authority
Glenn Oppel, Montana Association of Realtors
Shawn Bubb, Montana School Boards Association
Robin Cunningham, Fishing Outfitters Association of Montana
Nancy Butler, Montana State Fund
Larry Kibbee, Property Casualty Insurance Association of America

{Tape: 1; Side: B; Approx. Time Counter: 0 - 5.9}

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. MORGAN, in referring to the fiscal note, asked why none of the auditors for this program are being placed in Billings.

Jerry Keck said that there are two existing DOL auditors in Billings that would be cross-trained on this law.

REP. SESSO asked if business feels that this is a good use of government money. He also asked if it was a fixed or sliding fee. **Cary Hegreberg** said that the large number of contractors in Montana think that the funding is justified because they think the certification process needs to be enforced. He said that businesses support this growth in government because the alternative is mandatory workers compensation. **Jerry Keck** said that everybody would pay the \$125 set fee. They would eliminate the current \$17 fee, which has resulted in a fund balance of \$360,000, and replace it with the \$125. After the initial implementation, primarily of the Web data base, they will review the fee and consider reducing it.

Closing by Sponsor:

SEN. LEWIS said that independent contractors have told him that the two-year \$125 certification fee is cheaper than having required workers compensation. He said that **REP. MCKENNEY** would carry this bill in the House.

{Tape: 1; Side: B; Approx. Time Counter: 5.9 - 15.5}

HEARING ON SB 498**Opening Statement by Sponsor:**

SEN. JERRY BLACK, SD 14, Shelby, opened the hearing on **SB 498**, a bill to increase the limit for loans from the Renewable Resource Grant and Loan program to certain water users. The Pondera County Canal and Reservoir Company (PCCRC) is planning for a major rehabilitation project on the East Dam of Lake Frances. **SB 498** would provide a source of funding for private irrigation companies to obtain long-term, low-interest loans. Many of these irrigation projects are aging and are in significant need of repair. Since they are private, not public, entities the availability of State loan and grant funds are practically nonexistent. PCCRC would you use \$3 million of loan authority to rebuild and rehabilitate the East Dam of Lake Frances; the entire project would cost \$6 million to increase. This bill was amended in committee to also increase the loan limit to private individuals from \$200,000 to \$400,000.

HOUSE OF REPRESENTATIVES

Roll Call APPROPRIATIONS COMMITTEE

DATE 4/4/05

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. ROSIE BUZZAS, CHAIR	✓		
REP. CAROL JUNEAU, VICE CHAIR		✓	
REP. JOHN WITT, VICE CHAIR	✓		
REP. TIM CALLAHAN	✓		
REP. EVE FRANKLIN	✓		
REP. BILL GLASER	✓		
REP. RAY HAWK	✓		
REP. CYNTHIA HINER	✓		
REP. VERDELL JACKSON	✓		
REP. JOEY JAYNE		✓	
REP. CHRISTINE KAUFMANN	✓	✓	
REP. RALPH LENHART		✓	
REP. WALT McNUTT	✓	✓	
REP. JOHN MUSGROVE	✓		
REP. PENNY MORGAN		✓	
REP. RICK RIPLEY		✓	
REP. JOHN SESSO	✓		
REP. JOHN SINRUD	✓		
REP. JANNA TAYLOR	✓		
REP. JACK WELLS		✓	

s:/AppropRollCall2005

**Montana House of Representatives
Visitors Register**

APPROPRIATIONS COMMITTEE

Date 4-4-05

Bill No. SB-108 Sponsor(s) Sen D. Lewis

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

Name and Address	Representing	Support	Oppose	Inf.
Sen. Lewis		X		
Barbara Rant	MT Chamber	X		
Jerry Kukul	PCI	X		
KEITH KELLY	DEPT. OF LABOR Industry	X		
Bob Northington	PIAIA	X		
Cary Hegreberg	Contractors Assn.	X		
Dave Cogley	Self	X		
Nancy Butler	MT State Fund	X		
Harold Blattie				
Harold Blattie	MACO	X		
Nancy Schupp	MT Farm Bureau	X		
Riley Johnson	NFIB	X		
Jas. Miller	CAIR	X		
Glean Oppel	MT Assn Realtors	X		
Shawn Guss	PIAIA	X		
DORIN CUNNINGHAM	FDJW	X		
Bjor Roberts	PIAIA	X		
Jerry Keck	MT Dept. of Labor	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/AppropVisitorReg.sample2003

EXHIBIT 1
DATE 4-4-05
SB 108

HOUSE APPROPRIATIONS COMMITTEE
Testimony in Favor of SB 108
Hearing on April 4, 2005

MEMBERSHIP LIST OF SB 270 (2003 SESSION) ADVISORY COMMITTEE

Webb Brown	Montana Chamber of Commerce
Nancy Butler	Montana State Fund
Dave Cogley	Wildwood Log Homes
Jerry Driscoll	Montana State AFL-CIO
Cary Hegreberg	Montana Contractors Association
Larry Jones	Liberty Northwest Insurance
Riley Johnson	National Federation of Independent Business
Jerry Keck	Montana Department of Labor and Industry
Jacqueline Lenmark	American Insurance Association (AIA)
Larry Mayo	Montana Building Trades Council
Jason Miller	Pacific Northwest Regional Council of Carpenters
Jim Nys	Personnel Plus
Byron Roberts	Montana Building Industry Association
Carl Schweitzer	American Subcontractors Association of Montana
Brain Smith	Montana Motor Carriers Association
Bob Worthington	Montana Municipal Insurance Authority

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON APPROPRIATIONS

Call to Order: By **CHAIRMAN ROSALIE (ROSIE) BUZZAS**, on April 8, 2005 at 8:00 A.M., in Room 102 Capitol.

ROLL CALL

Members Present:

Rep. Rosalie (Rosie) Buzzas, Chairman (D)
Rep. Carol C. Juneau, Vice Chairman (D)
Rep. Tim Callahan (D)
Rep. Eve Franklin (D)
Rep. Ray Hawk (R)
Rep. Cynthia Hiner (D)
Rep. Joey Jayne (D)
Rep. Christine Kaufmann (D)
Rep. Ralph L. Lenhart (D)
Rep. Walter McNutt (R)
Rep. Penny Morgan (R)
Rep. John L. Musgrove (D)
Rep. Rick Ripley (R)
Rep. Janna Taylor (R)
Rep. Jack Wells (R)

Members Excused: Rep. Jon C. Sesso (D)
Rep. John Sinrud (R)

Members Absent: Rep. John E. Witt, Vice Chairman (R)
Rep. Bill E. Glaser (R)
Rep. Verdell Jackson (R)

Staff Present: Marcy McLean, Committee Secretary
Jon Moe, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 180, 4/5/2005; SB 197, 4/5/2005;
SB 489, 4/5/2005
Executive Action: SB 180; SB 93; SB 197; SB 108; SB
120; SB 35; SB 58; SB 30; SB 274;
SB 489; SB 498; SB 247

HEARING ON SB 197**Opening Statement by Sponsor:**

SEN. KELLY GEBHARDT, SD 23, Roundup, opened the hearing on **SB 197**, a bill to revise pension benefits for volunteer firefighters. He said he would limit his comments to the fiscal impact. The current Fiscal Note shows an expense of \$19,000, which he said could be off by \$3,000. The Volunteer Firefighters Retirement is funded by 5% of the money in a pool that has been funded by a 2/3% tax on fire insurance premiums. In 2002 the tax raised \$22.6 million and in 2004 raised \$28.6 million. This results in \$1.3 million per year allocated to the Volunteer Firefighters Retirement, with \$1.2 million paid out in benefits. Therefore, he said he thought there was adequate money to fund an increase in benefits to these firefighters. The intent of the increase is to attract and retain more volunteer firefighters.

EXHIBIT(aph75a01)

EXHIBIT(aph75a02)

EXHIBIT(aph75a03)

EXHIBIT(aph75a04)

Proponents:

John Semple, Montana Fire Alliance, said his group represents all of the volunteer fire service organizations. He said their concern is keeping volunteer firefighters beyond seven years of service. Making the retirement benefit more attractive would help them in these efforts.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 7.4}

John Northey, volunteer fireman, said that current state law provides that a volunteer firefighter who draws a retirement benefit can no longer serve as a member of a volunteer department. SB 197 would remove the prohibition and allow a retired volunteer to continue to serve on a department with no increased benefit. The purpose is to retain trained firefighters. He said the Volunteer Firefighters retirement is financially sound and he anticipated that increased revenue to the system will more than cover this additional benefit.

EXHIBIT(aph75a05)

EXECUTIVE ACTION ON SB 197

Motion: REP. SINRUD moved that SB 197 DO PASS.

Discussion:

REP. SINRUD said he does not agree with the Auditor's Fiscal Note.

EXHIBIT(aph75a13)

REP. GLASER said he is a volunteer firefighter and these people work for free. He said there would be no fiscal impact to this bill.

REP. MUSGROVE said he was concerned about the long-term impact to the retirement fund if they increase these benefits.

REP. SINRUD said the firefighter receives a pension after 20 years of service, but would lose that pension if he were to go back to firefighting. He said he does not think there would be a problem to the fund if they would continue these benefits.

CHAIRMAN BUZZAS said that she, too, was concerned about the long-term impact to the fund. She reminded the Committee that all other retirement requests have failed.

Vote: Motion carried 13-7 by roll call vote with REP. BUZZAS, REP. CALLAHAN, REP. FRANKLIN, REP. JAYNE, REP. JUNEAU, REP. KAUFMANN, and REP. MUSGROVE voting no. REP. JUNEAU voted by proxy. REP. GOLIE will carry bill in House.

EXECUTIVE ACTION ON SB 108

Motion: REP. MORGAN moved that SB 108 DO PASS.

Discussion:

REP. MORGAN explained this is the bill to certify sub-contractors.

REP. SESSO pointed out that the bill includes six new FTEs, and this is a good example of government having to add to staff to do the job.

REP. GLASER reminded the Committee that independent contractors supported this bill.

Vote: Motion carried 19-1 by roll call vote with REP. JUNEAU voting no. REP. JUNEAU voted by proxy. REP. MCKENNEY will carry bill in House.

EXECUTIVE ACTION ON SB 120

Motion: REP. JACKSON moved that SB 120 DO PASS.

Discussion:

REP. JACKSON said this bill would increase federal matching funds for hospitals.

Motion: REP. FRANKLIN moved that HB 120 BE AMENDED.
EXHIBIT(aph75a14)

Discussion:

REP. FRANKLIN said she did not oppose the bill but thought hospitals should be required to disclose the fee to patients.

REP. JACKSON responded that there is no connection between the patient and the fee. The fee will hold hospitals costs down because of the matching federal funds.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 10.1; Comments: Rep. Juneau entered hearing. Tape malfunction.}

Vote: Motion failed 13-7 by roll call vote with REP. BUZZAS, REP. CALLAHAN, REP. FRANKLIN, REP. HINER, REP. JUNEAU, REP. MUSGROVE, and REP. SESSO voting aye.

Vote: Motion carried 17-3 by roll call vote with REP. HAWK, REP. SINRUD, and REP. WELLS voting no. REP. MCNUTT will carry bill in House.

EXECUTIVE ACTION ON SB 35

Motion: REP. JAYNE moved that SB 35 BE TABLED.

Discussion:

REP. JAYNE said SB 35 contains the exact language as found in the public defender bill, and pointed out that the Fiscal Note shows an expense of \$418,000 from the General Fund.

Vote: Motion carried unanimously by voice vote.

HOUSE OF REPRESENTATIVES

Roll Call APPROPRIATIONS COMMITTEE

DATE 8:00 a.m. 4/8/05

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. ROSIE BUZZAS, CHAIR	✓		
REP. CAROL JUNEAU, VICE CHAIR	✓		
REP. JOHN WITT, VICE CHAIR		✓	
REP. TIM CALLAHAN	✓		
REP. EVE FRANKLIN	✓		
REP. BILL GLASER		✓	
REP. RAY HAWK	✓		
REP. CYNTHIA HINER	✓		
REP. VERDELL JACKSON		✓	
REP. JOEY JAYNE	✓		
REP. CHRISTINE KAUFMANN	✓		
REP. RALPH LENHART	✓		
REP. WALT McNUTT	✓		
REP. JOHN MUSGROVE	✓		
REP. PENNY MORGAN	✓		
REP. RICK RIPLEY	✓		
REP. JOHN SESSO		✓	✓
REP. JOHN SINRUD			✓
REP. JANNA TAYLOR	✓		
REP. JACK WELLS	✓		

HOUSE OF REPRESENTATIVES

Roll Call APPROPRIATIONS COMMITTEE

DATE 4/8/05 3:30

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. ROSIE BUZZAS, CHAIR	✓		
REP. CAROL JUNEAU, VICE CHAIR		✓	
REP. JOHN WITT, VICE CHAIR	✓		
REP. TIM CALLAHAN	✓		
REP. EVE FRANKLIN	✓		
REP. BILL GLASER	✓		
REP. RAY HAWK	✓		
REP. CYNTHIA HINER	✓		
REP. VERDELL JACKSON	✓		
REP. JOEY JAYNE	✓		
REP. CHRISTINE KAUFMANN	✓		
REP. RALPH LENHART	✓		
REP. WALT McNUTT	✓		
REP. JOHN MUSGROVE	✓	✗	
REP. PENNY MORGAN	✓		
REP. RICK RIPLEY	✓	✗	
REP. JOHN SESSO	✓		
REP. JOHN SINRUD	✓		
REP. JANNA TAYLOR	✓		
REP. JACK WELLS	✓		



HOUSE STANDING COMMITTEE REPORT

April 9, 2005

Page 1 of 1

Mr. Speaker:

We, your committee on **Appropriations** recommend that **Senate Bill 108** (third reading copy -- blue) be concurred in.

Signed: *Rosalie Buzzas*
Representative Rosalie (Rosalie) Buzzas, Chair

To be carried by Representative Joe McKenney

- END -

Committee Vote:
Yes 19, No 1.

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760903SC.hkh

HOUSE OF REPRESENTATIVES

Roll Call Vote

APPROPRIATIONS COMMITTEE

DATE 4/8/05 BILL NO SB 108 MOTION NO. 5

MOTION: morgan DO PASS

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
REP. CAROL JUNEAU, VICE CHAIR		✓	✓
REP. JOHN WITT, VICE CHAIR	✓		
REP. TIM CALLAHAN	✓		
REP. EVE FRANKLIN	✓		
REP. BILL GLASER	✓		
REP. RAY HAWK	✓		
REP. CYNTHIA HINER	✓		
REP. VERDELL JACKSON	✓		
REP. JOEY JAYNE	✓		
REP. CHRISTINE KAUFMANN	✓		
REP. RALPH LENHART	✓		
REP. RALPH McNUTT	✓		
REP. PENNY MORGAN	✓		
REP. JOHN MUSGROVE	✓		
REP. RICK RIPLEY	✓		
REP. JON SESSO	✓		
REP. JOHN SINRUD	✓		
REP. JANNA TAYLOR	✓		
REP. JACK WELLS	✓		
REP. ROSIE BUZZAS, CHAIR	✓		

Guneau

COMMITTEE PROXY

DATE: 4-8-05

I request to be excused from the

Appropriations

Committee because of other commitments. I desire to leave my proxy vote with:

Rep. BUZZARDE or Rep. Tim Calahan

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT

AYE NO

SENATE BILL/AMENDMENT

AYE NO

SB 180 TABK		X
SB 180 DO PASS	X	
SB 93 DO PASS	X	
SB 197 DO PASS	X	X
SB 108 DO PASS		X
SB 120 DO PASS	X	
AMENDMENT		

Rep./Sen.

Carl Guneau
(Signature)

1 SENATE BILL NO. 108

2 INTRODUCED BY LEWIS

3 BY REQUEST OF THE ECONOMIC AFFAIRS INTERIM COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING REQUIREMENTS FOR CERTIFICATION OF
6 INDEPENDENT CONTRACTORS; PROVIDING A CONCLUSIVE PRESUMPTION THAT AN INDEPENDENT
7 CONTRACTOR EXEMPTION CERTIFICATE VERIFIES AN INDEPENDENT CONTRACTOR'S STATUS FOR
8 PURPOSES OF WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS; PROVIDING
9 AUTHORITY TO SUSPEND OR REVOKE CERTIFICATION; SPECIFYING VIOLATIONS AND A PENALTY;
10 CLARIFYING THE DEFINITION OF "INDEPENDENT CONTRACTOR"; DECLARING LEGISLATIVE INTENT
11 FOR A CONCLUSIVE PRESUMPTION REGARDING AN INDEPENDENT CONTRACTOR EXEMPTION
12 CERTIFICATE; ALLOWING AN INDEPENDENT CONTRACTOR TO OPT OUT OF WORKERS'
13 COMPENSATION AND OCCUPATIONAL DISEASE LAWS; PROVIDING AN EXEMPTION TO THE GENERAL
14 PROHIBITION AGAINST A WAIVER OF STATUTES; REVISING THE DISPUTE APPEAL PERIOD AND
15 PROCESS; REPEALING A REQUIREMENT TO REPORT TO THE STATE COMPENSATION INSURANCE
16 FUND; AMENDING SECTIONS ~~45-30-201~~, 39-8-102, 39-51-201, 39-51-204, 39-71-105, 39-71-117, 39-71-401,
17 39-71-409, 39-71-415, AND 39-72-102, MCA; REPEALING SECTIONS 39-51-604 AND 39-71-120, MCA; AND
18 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

19
20 WHEREAS, the Montana Supreme Court ruled in *Wild v. Fregein Construction*, 2003 MT 115, 315 Mont.
21 425, 68 P.3d 855, that the independent contractor exemption certificate does not raise a conclusive presumption
22 as to the status of a person as an independent contractor AND THAT AN EMPLOYER HAS AN OBLIGATION TO
23 DETERMINE WHETHER AN INDIVIDUAL IS TREATED AS AN INDEPENDENT CONTRACTOR OR AS AN EMPLOYEE; and

24 WHEREAS, the Montana Supreme Court in the *Wild* decision ruled that it is against the public policy
25 of the state for an employer TO COERCE A WORKER TO WORK AS AN INDEPENDENT CONTRACTOR BY OFFERING to pay
26 an independent contractor at a rate higher than the employer pays employees; and

27 WHEREAS, the Montana Supreme Court in the *Wild* decision ~~identified that a person does not have an~~
28 ~~independent business if the person performs work for only one entity~~ AFFIRMED THE TWIN DETERMINANTS OF
29 INDEPENDENT CONTRACTOR STATUS AS BEING "A" ISSUES OF CONTROL AND "B" WHETHER THE INDIVIDUAL IS IN AN
30 INDEPENDENT BUSINESS, COMMONLY KNOWN AS THE "A-B" TEST, AND EMPHASIZED THE NECESSITY OF BOTH FACTORS

1 BEING PRESENT, WITH PERFORMING WORK FOR OTHER PERSONS BEING AN INDICATION OF AN INDEPENDENT BUSINESS;

2 and

3 WHEREAS, THE CONCURRING OPINION IN THE WILD DECISION FURTHER SUGGESTED THAT THE DEPARTMENT
4 OF LABOR AND INDUSTRY STRENGTHEN THE CERTIFICATION PROCESS TO PROVIDE A CONCLUSIVE DETERMINATION OF
5 INDEPENDENT CONTRACTOR STATUS; AND

6 WHEREAS, the Wild decision created a great deal of uncertainty in matters involving independent
7 contractors and employees in the business community, WITH EMPLOYERS AND INDEPENDENT CONTRACTORS COMING
8 TOGETHER TO PROPOSE A CONSENSUS SOLUTION AFTER PARTICIPATING IN A STUDY REQUIRED BY SENATE BILL 270,
9 PASSED BY THE 58TH LEGISLATURE; and

10 WHEREAS, the Montana Legislature considers enacting legislation appropriate to effectively reverse
11 the Wild decision and to restore the conclusive presumption of an independent contractor exemption certificate
12 as well as to allow employers to pay persons with the independent contractor exemption certificate at a rate
13 higher than the rate paid to employees and additionally to allow a person with an independent contractor
14 exemption certificate to work for only one employing unit without becoming an employee as well as to waive the
15 benefits of the workers' compensation and occupational disease laws.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18
19 NEW SECTION. Section 1. Independent contractor certification. (1) (a) A person who regularly AND
20 CUSTOMARILY performs services at a location other than the person's own fixed business location shall apply to
21 the department for an independent contractor exemption certificate UNLESS THE PERSON HAS ELECTED TO BE BOUND
22 PERSONALLY AND INDIVIDUALLY BY THE PROVISIONS OF COMPENSATION PLAN NO. 1, 2, OR 3.

23 (b) A person who meets the requirements of this section and receives an independent contractor
24 exemption certificate is not required to obtain a personal workers' compensation insurance policy.

25 (c) For the purposes of this section, "person" means a sole proprietor, a working member of a
26 partnership, a working member of a limited liability partnership, or a working member of a member-managed
27 limited liability company.

28 (2) The department shall adopt rules relating to an original application for or renewal of an independent
29 contractor exemption certificate. The department shall adopt by rule the amount of the fee for an application or
30 certificate renewal. The application or renewal must be accompanied by the fee.

(3) The department shall deposit the application or renewal fee in an account in the state special revenue fund to pay the costs of administering the program.

(4) (A) To obtain an independent contractor exemption certificate, the applicant shall swear to and acknowledge the following:

(a)(i) that the applicant has been and will continue to be free from control or direction over the performance of the person's own services, both under contract and in fact; and

(b)(ii) that the applicant is engaged in an independently established trade, occupation, profession, or business and will provide sufficient documentation of that fact to the department.

(B) FOR THE PURPOSES OF SUBSECTION (4)(A)(I), AN ENDORSEMENT REQUIRED FOR LICENSURE, AS PROVIDED IN 37-47-303, DOES NOT IMPLY OR CONSTITUTE CONTROL.

(5) An applicant for an independent contractor exemption certificate shall submit an application under oath on a form prescribed by the department and containing the following:

(a) the applicant's name and address;

(b) the applicant's social security number;

(c) each occupation for which the applicant is seeking independent contractor certification; and

(d) other documentation as provided by department rule to assist in determining if the applicant has an independently established business.

(6) The department shall issue an independent contractor exemption certificate to an applicant if the department determines that an applicant meets the requirements of this section.

(7) (a) ~~A conclusive presumption of independent contractor status requires department approval of an application and requires the person to be working under an independent contractor exemption certificate~~ WHEN THE DEPARTMENT APPROVES AN APPLICATION FOR AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE AND THE PERSON IS WORKING UNDER THE INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE, THE PERSON'S STATUS IS CONCLUSIVELY PRESUMED TO BE THAT OF AN INDEPENDENT CONTRACTOR.

(b) ~~If both conditions in subsection (7)(a) exist, it is conclusive that the~~ A person working under an approved independent contractor exemption certificate has waived all rights and benefits under the Workers' Compensation Act and the Occupational Disease Act of Montana, precluding the person AND IS PRECLUDED from obtaining benefits under either of those acts unless the person has elected coverage pursuant to 39-71-401(3) TO BE BOUND PERSONALLY AND INDIVIDUALLY BY THE PROVISIONS OF COMPENSATION PLAN NO. 1, 2, OR 3.

(C) FOR THE PURPOSES OF THE WORKERS' COMPENSATION ACT AND THE OCCUPATIONAL DISEASE ACT OF

1 MONTANA, A PERSON IS WORKING UNDER AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE IF:

2 (I) THE PERSON IS PERFORMING WORK IN THE TRADE, BUSINESS, OCCUPATION, OR PROFESSION LISTED ON THE
3 PERSON'S INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE; AND

4 (II) THE HIRING AGENT AND THE PERSON HOLDING THE INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE DO
5 NOT HAVE A WRITTEN OR AN ORAL AGREEMENT THAT THE INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE HOLDER'S
6 STATUS WITH RESPECT TO THAT HIRING AGENT IS THAT OF AN EMPLOYEE.

7 (8) Once issued, an independent contractor exemption certificate remains in effect for 2 years unless:

8 (a) suspended or revoked pursuant to [section 2]; or

9 (b) canceled by the independent contractor.

10 (9) If the department denies an application for an independent contractor exemption certificate, the
11 applicant may contest the denial by petitioning the workers' compensation court within 30 days of the mailing
12 of the denial.

13
14 **NEW SECTION. Section 2. Suspension or revocation of independent contractor exemption**

15 **certificate.** (1) The department may suspend an independent contractor exemption certificate for a specific
16 business relationship if the department determines that the employing unit exerts or retains a right of control to
17 a degree that causes a certificate holder to violate the provisions of [section 1(4)].

18 (2) The department may revoke an independent contractor exemption certificate after determining that
19 the certificate holder:

20 (a) provided misrepresentations in the application affidavit or certificate renewal form;

21 (b) altered or amended the application form, the renewal application form, other supporting
22 documentation required by the department, or the independent contractor exemption certificate; or

23 (c) failed to cooperate with the department in providing information relevant to the continued validity of
24 the holder's certificate.

25 (3) A decision by the department to suspend or revoke an independent contractor exemption certificate
26 takes effect upon issuance of the decision. Suspension or revocation of the independent contractor exemption
27 certificate does not invalidate the certificate holder's waiver of the rights and benefits of the Workers'
28 Compensation Act and Occupational Disease Act of Montana for the period prior to notice to the hiring agent
29 by the department of the department's decision to suspend or revoke the independent contractor exemption
30 certificate.

(4) A decision by the department to suspend or revoke an independent contractor exemption certificate may be appealed in the same manner as provided in [section 1(9)] for denial of an application for an independent contractor exemption certificate.

NEW SECTION. Section 3. Independent contractor violations -- penalty. (1) A person may not:

(a) perform work as an independent contractor without first;

(i) obtaining from the department an independent contractor exemption certificate UNLESS THE INDIVIDUAL IS NOT REQUIRED TO OBTAIN AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE PURSUANT TO [SECTION 1(1)(A)]; OR

(ii) ELECTING TO BE BOUND PERSONALLY AND INDIVIDUALLY BY THE PROVISIONS OF COMPENSATION PLAN NO. 1, 2, OR 3;

(b) perform work as an independent contractor when the department has revoked or denied the independent contractor's exemption certificate;

(c) transfer to another person or allow another person to use an independent contractor exemption certificate that was not issued to that person;

(d) alter or falsify an independent contractor exemption certificate; or

(e) misrepresent the person's status as an independent contractor.

(2) An employer may not:

(a) require an employee through coercion, misrepresentation, or fraudulent means to adopt independent contractor status to avoid the employer's obligations to provide workers' compensation coverage; or

(b) exert control to a degree that causes the independent contractor to violate the provisions of [section 1(4)].

(3) In addition to any other penalty or sanction provided in this chapter, a person or employer who violates a provision of this section is subject to a fine to be assessed by the department of up to \$1,000 for each violation. The department shall deposit the fines in the uninsured employers' fund. The lien provisions of 39-71-506 apply to any assessed fines.

(4) A person or employer who disputes a fine assessed by the department pursuant to this section may file an appeal with the department within 30 days of the date on which the fine was assessed. If, after mediation, the issue is not resolved, the issue must be transferred to the workers' compensation court for resolution.

~~Section 4.~~ Section 15-30-201, MCA, is amended to read:

~~"15-30-201. Definitions.~~ When used in 15-30-201 through 15-30-209, the following definitions apply:

~~(1) "Agricultural labor" means all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.~~

~~(2) (a) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but,~~

~~(b) The term does not include employment beyond the scope of normal household or domestic duties such as home health care or domiciliary care.~~

~~(3) "Employee" means:~~

~~(a) an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision of the United States or Montana or any agency or instrumentality of the United States, the state of Montana, or a political subdivision of the United States or Montana;~~

~~(b) an officer of a corporation;~~

~~(c) any individual who performs services for another individual or organization having the right to control the employee as to the services to be performed and as to the manner of performance;~~

~~(d) all classes, grades, or types of employees including minors and aliens, superintendents, managers, and other supervisory personnel.~~

~~(4) "Employer" means:~~

~~(a) the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person;~~

~~(b) a person who pays \$1,000 or more in wages within the current calendar year;~~

~~(c) a person who pays \$1,000 or more in cash for domestic or household service in any quarter during the current calendar year;~~

~~(d) any individual or organization, including state government and any of its political subdivisions or instrumentalities, partnership, association, trust, estate, joint stock company, insurance company, limited liability company or a limited liability partnership that has filed with the secretary of state, or domestic or foreign corporation or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of~~

1 a deceased person who has or had in its employ one or more individuals performing services for it within this
2 state; or

3 ~~—— (e) any person found to be an employer under Title 39, chapter 51, for unemployment insurance~~
4 ~~purposes is considered an employer for state income tax withholding purposes.~~

5 ~~—— (5) "Independent contractor" means an individual who renders service in the course of an occupation~~
6 ~~and:~~

7 ~~—— (a) has been and will continue to be free from control or direction over the performance of the services;~~
8 ~~both under contract and in fact; and~~

9 ~~—— (b) is engaged in an independently established trade, occupation, profession, or business working under~~
10 ~~an independent contractor exemption certificate provided for in [section 1].~~

11 ~~—— (6) "Lookback period" means the 12-month period ending the preceding June 30.~~

12 ~~—— (7) (a) "Wages", unless specifically exempted under subsection (7)(b), means all remuneration for~~
13 ~~services performed by an employee for the employer, including the cash value of all remuneration paid in any~~
14 ~~medium other than cash, and includes but is not limited to the following:~~

15 ~~—— (i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness~~
16 ~~periods;~~

17 ~~—— (ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous~~
18 ~~service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and~~

19 ~~—— (iii) except those tips that are exempted in subsection (7)(b)(v), tips or other gratuities received by the~~
20 ~~employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax~~
21 ~~purposes.~~

22 ~~—— (b) The term "wages" does not include:~~

23 ~~—— (i) the amount of any payment made by the employer for employees, if the payment was made for:~~

24 ~~—— (A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal~~
25 ~~Revenue Code;~~

26 ~~—— (B) sickness or accident disability under a workers' compensation policy;~~

27 ~~—— (C) medical or hospitalization expenses in connection with sickness or accident disability, including~~
28 ~~health insurance for the employee or the employee's immediate family; or~~

29 ~~—— (D) death, including life insurance for the employee or the employee's immediate family;~~

30 ~~—— (ii) compensation in the form of meals and lodging, provided the compensation is not includable in gross~~

1 ~~income for state individual income tax purposes;~~

2 ~~—— (iii) distributions from a multiple employer welfare arrangement, as defined in 29 U.S.C. 1002(40)(A),~~
3 ~~to a qualified individual employee;~~

4 ~~—— (iv) payments made by an employee to any group plan or program to the extent that the payments are~~
5 ~~not taxable for state income tax purposes;~~

6 ~~—— (v) tips or gratuities that are in accordance with 26 U.S.C. 3402(k) or service charges that are covered~~
7 ~~by 26 U.S.C. 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983,~~
8 ~~received by persons for services rendered by them to patrons of premises licensed to provide food, beverage,~~
9 ~~or lodging; or~~

10 ~~—— (vi) payments that may not be taxed under federal law. (Subsection (7)(b)(v) terminates on occurrence~~
11 ~~of contingency--sec. 3, Ch. 634, L. 1983.)"~~

12
13 **Section 4.** Section 39-8-102, MCA, is amended to read:

14 **"39-8-102. Definitions.** As used in this chapter, unless the context indicates otherwise, the following
15 definitions apply:

16 (1) "Applicant" means a person that seeks to be licensed under this chapter.

17 (2) "Client" means a person that obtains all or part of its workforce from another person through a
18 professional employer arrangement.

19 (3) "Controlling person" means an individual who possesses the right to direct the management or
20 policies of a professional employer organization or group through ownership of voting securities, by contract or
21 otherwise.

22 (4) "Department" means the department of labor and industry.

23 (5) "Employee leasing arrangement" means an arrangement by contract or otherwise under which a
24 professional employer organization hires its own employees and assigns the employees to work for another
25 person to staff and manage, or to assist in staffing and managing, a facility, function, project, or enterprise on
26 an ongoing basis.

27 (6) "Licensee" means a person licensed as a professional employer organization or group under this
28 chapter.

29 (7) "Person" means an individual, association, company, firm, partnership, corporation, or limited liability
30 company.

1 (8) (a) "Professional employer arrangement" means an arrangement by contract or otherwise under
2 which:

3 (i) a professional employer organization or group assigns employees to perform services for a client;
4 (ii) the arrangement is or is intended to be ongoing rather than temporary in nature; and
5 (iii) the employer responsibilities are shared by the professional employer organization or group and the
6 client.

7 (b) The term does not include:

8 (i) services performed by a temporary service contractor;
9 (ii) arrangements under which a person shares employees with a commonly owned company within the
10 meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended, if:

11 (A) that person's principal business activity is not entering into professional employer arrangements;
12 and

13 (B) that person does not represent to the public that the person is a professional employer organization
14 or group;

15 (iii) arrangements existing for employment of an independent contractor, ~~as defined in 39-71-120~~
16 working under an independent contractor exemption certificate provided for in [section 1]; and

17 (iv) arrangements by a health care facility, as defined in 50-5-101, to provide its own employees to
18 perform services at and on behalf of another health care facility or at and on behalf of a private office of
19 physicians, dentists, or other physical or mental health care workers licensed and regulated under Title 37.

20 (9) "Professional employer group" or "group" means at least two but not more than five professional
21 employer organizations, each of which is majority-owned by the same person.

22 (10) (a) "Professional employer organization" means:

23 (i) a person that provides services of employees pursuant to one or more professional employer
24 arrangements or to one or more employee leasing arrangements; or

25 (ii) a person that represents to the public that the person provides services pursuant to a professional
26 employer arrangement.

27 (b) The term does not include a health care facility, as defined in 50-5-101, that provides its own
28 employees to perform services at and on behalf of another health care facility or at and on behalf of a private
29 office of physicians, dentists, or other physical or mental health care workers licensed and regulated under Title
30 37.

(11) "Temporary service contractor" means a person conducting a business that hires its own employees and assigns them to clients to fulfill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects."

Section 5. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the base period means the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which the individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

1 (7) "Contributions" means the money payments to the state unemployment insurance fund required by
2 this chapter but does not include assessments under 39-51-404~~(4)~~.

3 (8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part
4 17.

5 (9) (a) "Domestic or household service" means employment of persons other than members of the
6 household for the purpose of tending to the aid and comfort of the employer or members of the employer's
7 family, including but not limited to housecleaning and yard work, ~~but~~

8 (b) The term does not include employment beyond the scope of normal household or domestic duties,
9 such as home health care or domiciliary care.

10 (10) "Employing unit" means any individual or organization (including the state government and any of
11 its political subdivisions or instrumentalities or an Indian tribe or tribal unit), partnership, association, trust, estate,
12 joint-stock company, insurance company, limited liability company or limited liability partnership that has filed
13 with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy,
14 trustee or the trustee's successor, or legal representative of a deceased person ~~that has or had in its~~ in whose
15 employ one or more individuals ~~performing~~ perform or performed services ~~for it~~ within this state, except as
16 provided under 39-51-204(1)(a) and (1)(q). All individuals performing services within this state for any employing
17 unit that maintains two or more separate establishments within this state are considered to be employed by a
18 single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in
19 performing the work of any agent or employee of an employing unit is considered to be employed by the
20 employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the employing
21 unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the
22 work.

23 (11) "Employment office" means a free public employment office or branch of an office operated by this
24 state or maintained as a part of a state-controlled system of public employment offices or other free public
25 employment offices operated and maintained by the United States government or its instrumentalities as the
26 department may approve.

27 (12) "Fund" means the unemployment insurance fund established by this chapter to which all
28 contributions and payments in lieu of contributions ~~are required to~~ must be paid and from which all benefits
29 provided under this chapter must be paid.

30 (13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for

1 which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a
2 flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the employer.

3 (14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a
4 hospital.

5 (15) "Independent contractor" means an individual ~~who renders service in the course of an occupation~~
6 ~~and:~~

7 ~~—— (a) has been and will continue to be free from control or direction over the performance of the services;~~
8 ~~both under a contract and in fact; and~~

9 ~~—— (b) is engaged in an independently established trade, occupation, profession, or business working under~~
10 ~~an independent contractor exemption certificate provided for in [section 1].~~

11 (16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education
12 Assistance Act, 25 U.S.C. 450b(e).

13 (17) (a) "Institution of higher education", for the purposes of this part, means an educational institution
14 that:

15 (i) admits as regular students only individuals having a certificate of graduation from a high school or
16 the recognized equivalent of a certificate;

17 (ii) is legally authorized in this state to provide a program of education beyond high school;

18 (iii) provides an educational program for which ~~it~~ the institution awards a bachelor's or higher degree or
19 provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of
20 postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a
21 recognized occupation; and

22 (iv) is a public or other nonprofit institution.

23 (b) Notwithstanding subsection (17)(a), all universities in this state are institutions of higher education
24 for purposes of this part.

25 (18) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code,
26 26 U.S.C. 132.

27 (19) "State" includes, in addition to the states of the United States of America, the District of Columbia,
28 Puerto Rico, the Virgin Islands, and Canada.

29 (20) "Taxes" means contributions and assessments required under this chapter but does not include
30 penalties or interest for past-due or unpaid contributions or assessments.

(21) "Tribal unit" means an Indian tribe and any subdivision, subsidiary, or business enterprise that is wholly owned by that tribe.

(22) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

(23) (a) "Wages", unless specifically exempted under subsection (23)(b), means all remuneration payable for personal services, including the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited to:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family;

(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules; or

(iii) a no-additional-cost service.

(24) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(25) ~~An individual's weekly~~ "Weekly benefit amount" means the amount of benefits that ~~the an~~ individual would be entitled to receive for 1 week of total unemployment."

Section 6. Section 39-51-204, MCA, is amended to read:

1 **"39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not include:

2 (a) domestic or household service in a private home, local college club, or local chapter of a college
3 fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and
4 has domestic or household service employment, all employees engaged in domestic or household service must
5 be excluded from coverage under this chapter if the employer:

6 (i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the
7 subject wages attributable to domestic or household service; and

8 (ii) keeps separate books and records to account for the employment of persons in domestic or
9 household service.

10 (b) service performed by a dependent member of a sole proprietor for whom an exemption may be
11 claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based
12 on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

13 (c) service performed as a freelance correspondent or newspaper carrier if the person performing the
14 service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged
15 in writing that the person performing the service and the service are not covered. As used in this subsection:

16 (i) "freelance correspondent" is a person who submits articles or photographs for publication and is paid
17 by the article or by the photograph; and

18 (ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering
19 newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the
20 employee's main duties, carries or delivers papers.

21 (d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance
22 salespeople paid solely by commission and without a guarantee of minimum earnings;

23 (e) service performed by a cosmetologist or barber who is licensed under Title 37, chapter 31, and:

24 (i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment
25 insurance and workers' compensation;

26 (ii) who contracts with a salon or shop, as defined in 37-31-101, and the contract must show that the
27 cosmetologist or barber:

28 (A) is free from all control and direction of the owner in the contract;

29 (B) receives payment for service from individual clientele; and

30 (C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge;

1 and

2 (iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The
3 existence of a single license for the salon or shop may not be construed as a lack of freedom from control or
4 direction under this subsection.

5 (f) casual labor not in the course of an employer's trade or business performed in any calendar quarter,
6 unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual
7 who is regularly employed by the employer to perform the service. "Regularly employed" means that the service
8 is performed during at least 24 days in the same quarter.

9 (g) service performed by sole proprietors, working members of a partnership, members of a
10 member-managed limited liability company that has filed with the secretary of state, or partners in a limited
11 liability partnership that has filed with the secretary of state;

12 (h) service performed for the installation of floor coverings if the installer:

13 (i) bids or negotiates a contract price based upon work performed by the yard or by the job;

14 (ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

15 (iii) may perform service for anyone without limitation;

16 (iv) may accept or reject any job;

17 (v) furnishes substantially all tools and equipment necessary to provide the service; and

18 (vi) works under a written contract that:

19 (A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract
20 obligations;

21 (B) states that the installer is not covered by unemployment insurance; and

22 (C) requires the installer to provide a current workers' compensation policy or to obtain an exemption
23 from workers' compensation requirements;

24 (i) service performed as a direct seller as defined by 26 U.S.C. 3508;

25 (j) service performed by a petroleum land professional. As used in this subsection, "petroleum land
26 professional" means a person who:

27 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating
28 a business agreement for the exploration or development of minerals;

29 (ii) is paid for service that is directly related to the completion of a contracted specific task rather than
30 on an hourly wage basis; and

1 (iii) performs all services as an independent contractor pursuant to a written contract.

2 (k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise
3 of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

4 (l) service performed by an individual receiving rehabilitation or remunerative work in a facility
5 conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is
6 impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who,
7 because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

8 (m) service performed as part of an unemployment work-relief or work-training program assisted or
9 financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an
10 Indian tribe by an individual receiving work relief or work training;

11 (n) service performed for a state prison or other state correctional or custodial institution by an inmate
12 of that institution;

13 (o) service performed by an individual who is sentenced to perform court-ordered community service
14 or similar work;

15 (p) service performed by elected public officials;

16 (q) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject
17 to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded
18 from coverage under this chapter if the employer:

19 (i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the
20 monetary amount or number of employees and days worked for the subject wages attributable to agricultural
21 labor; and

22 (ii) keeps separate books and records to account for the employment of persons in agricultural labor.

23 (r) service performed in the employ of any other state or its political subdivisions or of the United States
24 government or of an instrumentality of any other state or states or their political subdivisions or of the United
25 States, except that national banks organized under the national banking law are not entitled to exemption under
26 this subsection and are subject to this chapter the same as state banks, if the service is excluded from
27 employment as defined in 5 U.S.C. 8501(1)(I) and section 3306(c)(6) of the Federal Unemployment Tax Act;

28 (s) service in which unemployment insurance is payable under an unemployment insurance system
29 established by an act of congress if the department enters into agreements with the proper agencies under an
30 act of congress and those agreements become effective in the manner prescribed in the Montana Administrative

1 Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring
2 potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of
3 congress or who have, after acquiring potential rights to unemployment insurance under the act of congress,
4 acquired rights to benefits under this chapter;

5 (t) service performed in the employ of a school or university if the service is performed by a student who
6 is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse
7 is advised, at the time that the spouse commences to perform the service, that the employment of the spouse
8 to perform the service is provided under a program to provide financial assistance to the student by the school
9 or university and that the employment is not covered by any program of unemployment insurance;

10 (u) service performed by an individual who is enrolled at a nonprofit or public educational institution that
11 normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in
12 attendance at the place where its educational activities are carried on, as a student in a full-time program taken
13 for credit at an institution that combines academic instruction with work experience if the service is an integral
14 part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u)
15 does not apply to service performed in a program established for or on behalf of an employer or group of
16 employers;

17 (v) service performed as an officer or member of the crew of a vessel on the navigable waters of the
18 United States;

19 (w) service performed by an alien admitted to the United States to perform agricultural labor pursuant
20 to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act;

21 (x) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for
22 another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873;

23 (y) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care
24 for individuals who, because of age or infirmity, are unable to care for themselves when the person providing
25 the service is employed directly by a family member or an individual who is a legal guardian; or

26 (z) service performed by an individual as an official, including a timer, referee, umpire, or judge, at an
27 amateur athletic event.

28 (2) An individual found to be an independent contractor by the department under the terms of
29 ~~39-71-401(3)~~ [section 1] is considered an independent contractor for the purposes of this chapter. An
30 independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant

1 to 39-51-2402.

2 (3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or
3 a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is
4 excluded from employment for purposes of the Federal Unemployment Tax Act."

5
6 **Section 7.** Section 39-71-105, MCA, is amended to read:

7 **"39-71-105. Declaration of public policy.** For the purposes of interpreting and applying Title 39,
8 chapters 71 and 72, the following is the public policy of this state:

9 (1) ~~It is an~~ An objective of the Montana workers' compensation system is to provide, without regard to
10 fault, wage supplement and medical benefits to a worker suffering from a work-related injury or disease.
11 Wage-loss benefits are not intended to make an injured worker whole; ~~they~~ but are intended to assist a worker
12 at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable
13 relationship to actual wages lost as a result of a work-related injury or disease.

14 (2) It is the intent of the legislature to assert that a conclusive presumption exists that recognizes that
15 a holder of a current, valid independent contractor exemption certificate issued by the department is an
16 independent contractor if the person is working under the independent contractor exemption certificate. The
17 holder of an independent contractor exemption certificate may waive ~~WAIVES~~ the rights, benefits, and obligations
18 of Title 39, chapters 71 and 72, UNLESS THE PERSON HAS ELECTED TO BE BOUND PERSONALLY AND INDIVIDUALLY BY
19 THE PROVISIONS OF COMPENSATION PLAN NO. 1, 2, OR 3.

20 ~~(2)(3)~~ (3) A worker's removal from the ~~work force due to~~ workforce because of a work-related injury or
21 disease has a negative impact on the worker, the worker's family, the employer, and the general public.
22 Therefore, ~~it is~~ an objective of the workers' compensation system is to return a worker to work as soon as
23 possible after the worker has suffered a work-related injury or disease.

24 ~~(3)(4)~~ (4) Montana's workers' compensation and occupational disease insurance systems are intended to
25 be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be
26 able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed
27 to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

28 ~~(4)(5)~~ (5) Title 39, chapters 71 and 72, must be construed according to their terms and not liberally in favor
29 of any party.

30 ~~(5)(6)~~ (6) It is the intent of the legislature that stress claims, often referred to as "mental-mental claims" and

1 "mental-physical claims", are not compensable under Montana's workers' compensation and occupational
2 disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims
3 have a potential to place an economic burden on the workers' compensation and occupational disease system.
4 The legislature also recognizes that there are other states that do not provide compensation for various
5 categories of stress claims and that stress claims have presented economic problems for certain other
6 jurisdictions. In addition, not all injuries are compensable under the present system, as is the case with repetitive
7 injury claims, and it is within the legislature's authority to define the limits of the workers' compensation and
8 occupational disease system."

9
10 **Section 8.** Section 39-71-117, MCA, is amended to read:

11 **"39-71-117. Employer defined.** (1) "Employer" means:

12 (a) the state and each county, city and county, city school district, and irrigation district; all other districts
13 established by law; all public corporations and quasi-public corporations and public agencies; each person; each
14 prime contractor; each firm, voluntary association, limited liability company, limited liability partnership, and
15 private corporation, including any public service corporation and including an independent contractor who has
16 a person in service under an appointment or contract of hire, expressed or implied, oral or written; and the legal
17 representative of any deceased employer or the receiver or trustee of the deceased employer;

18 (b) any association, corporation, limited liability company, limited liability partnership, or organization
19 that seeks permission and meets the requirements set by the department by rule for a group of individual
20 employers to operate as self-insured under plan No. 1 of this chapter; and

21 (c) any nonprofit association, limited liability company, limited liability partnership, or corporation or other
22 entity funded in whole or in part by federal, state, or local government funds that places community service
23 participants, as described in 39-71-118(1)(e), with nonprofit organizations or associations or federal, state, or
24 local government entities.

25 (2) A temporary service contractor is the employer of a temporary worker for premium and loss
26 experience purposes.

27 (3) Except as provided in chapter 8 of this title, an employer defined in subsection (1) who uses the
28 services of a worker furnished by another person, association, contractor, firm, limited liability company, limited
29 liability partnership, or corporation, other than a temporary service contractor, is presumed to be the employer
30 for workers' compensation premium and loss experience purposes for work performed by the worker. The

1 presumption may be rebutted by substantial credible evidence of the following:

2 (a) the person, association, contractor, firm, limited liability company, limited liability partnership, or
3 corporation, other than a temporary service contractor, furnishing the services of a worker to another retains
4 control over all aspects of the work performed by the worker, both at the inception of employment and during
5 all phases of the work; and

6 (b) the person, association, contractor, firm, limited liability company, limited liability partnership, or
7 corporation, other than a temporary service contractor, furnishing the services of a worker to another has
8 obtained workers' compensation insurance for the worker in Montana both at the inception of employment and
9 during all phases of the work performed.

10 (4) An interstate or intrastate common or contract motor carrier that maintains a place of business in
11 this state and uses an employee or worker in this state is considered the employer of that employee, is liable
12 for workers' compensation premiums, and is subject to loss experience rating in this state unless:

13 (a) the worker in this state is certified as an independent contractor as provided in ~~39-71-401(3)~~ section
14 11; or

15 (b) the person, association, contractor, firm, limited liability company, limited liability partnership, or
16 corporation furnishing employees or workers in this state to a motor carrier has obtained Montana workers'
17 compensation insurance on the employees or workers in Montana both at the inception of employment and
18 during all phases of the work performed."

19
20 **Section 9.** Section 39-71-401, MCA, is amended to read:

21 **"39-71-401. Employments covered and employments exempted.** (1) Except as provided in
22 subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all
23 employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or
24 contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation
25 plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to
26 and bound by the compensation plan that has been elected by the employer.

27 (2) Unless the employer elects coverage for these employments under this chapter and an insurer
28 allows an election, the Workers' Compensation Act does not apply to any of the following employments:

29 (a) household and domestic employment;

30 (b) casual employment as defined in 39-71-116;

1 (c) employment of a dependent member of an employer's family for whom an exemption may be
2 claimed by the employer under the federal Internal Revenue Code;

3 (d) employment of sole proprietors, working members of a partnership, working members of a limited
4 liability partnership, or working members of a member-managed limited liability company, except as provided
5 in subsection (3);

6 (e) employment of a real estate, securities, or insurance salesperson paid solely by commission and
7 without a guarantee of minimum earnings;

8 (f) employment as a direct seller as defined by 26 U.S.C. 3508;

9 (g) employment for which a rule of liability for injury, occupational disease, or death is provided under
10 the laws of the United States;

11 (h) employment of a person performing services in return for aid or sustenance only, except
12 employment of a volunteer under 67-2-105;

13 (i) employment with a railroad engaged in interstate commerce, except that railroad construction work
14 is included in and subject to the provisions of this chapter;

15 (j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;

16 (k) employment of a person performing services as a newspaper carrier or freelance correspondent if
17 the person performing the services or a parent or guardian of the person performing the services in the case of
18 a minor has acknowledged in writing that the person performing the services and the services are not covered.
19 As used in this subsection, "freelance correspondent" is a person who submits articles or photographs for
20 publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

21 (i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles;
22 but

23 (ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries
24 or delivers papers.

25 (l) cosmetologist's services and barber's services as ~~defined~~ referred to in 39-51-204(1)(e);

26 (m) a person who is employed by an enrolled tribal member or an association, business, corporation,
27 or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is
28 conducted solely within the exterior boundaries of an Indian reservation;

29 (n) employment of a jockey who is performing under a license issued by the board of horseracing from
30 the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out

1 after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing,
2 that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

3 (o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing
4 services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

5 (p) employment of an employer's spouse for whom an exemption based on marital status may be
6 claimed by the employer under 26 U.S.C. 7703;

7 (q) a person who performs services as a petroleum land professional. As used in this subsection, a
8 "petroleum land professional" is a person who:

9 (i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating
10 a business agreement for the exploration or development of minerals;

11 (ii) is paid for services that are directly related to the completion of a contracted specific task rather than
12 on an hourly wage basis; and

13 (iii) performs all services as an independent contractor pursuant to a written contract.

14 (r) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability
15 company who qualifies under one or more of the following provisions:

16 (i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the
17 limited liability company and does not receive any pay from the corporation or the limited liability company for
18 performance of the duties;

19 (ii) the officer or manager is engaged primarily in household employment for the corporation or the
20 limited liability company;

21 (iii) the officer or manager either:

22 (A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the
23 limited liability company; or

24 (B) owns less than 20% of the number of shares of stock in the corporation or limited liability company
25 if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in
26 subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company;
27 or

28 (iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law,
29 daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of
30 subsection (2)(r)(iii)(A) or (2)(r)(iii)(B).

1 (s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

2 (t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise
3 of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

4 (u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care
5 for individuals who, because of age or infirmity, are unable to care for themselves when the person providing
6 the service is employed directly by a family member or an individual who is a legal guardian;

7 (v) employment of a person who is not an employee or worker in this state as defined in 39-71-118(10);

8 (w) employment of a person who is working under an independent contractor exemption certificate.

9 (3) ~~(a) A sole proprietor, a working member of a partnership, a working member of a limited liability~~
10 ~~partnership, or a working member of a member-managed limited liability company who represents to the public~~
11 ~~that the person is an independent contractor~~ A person who regularly AND CUSTOMARILY performs services at
12 locations other than the person's own fixed business location shall elect to be bound personally and individually
13 by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from
14 the Workers' Compensation Act unless the person has waived the rights and benefits of the Workers'
15 Compensation Act and Occupational Disease Act of Montana by obtaining an independent contractor exemption
16 certificate from the department pursuant to [section 1].

17 (b) A person who holds an independent contractor exemption certificate may purchase a workers'
18 compensation insurance policy and with the insurer's permission elect coverage for the certificate holder.

19 ~~(b) The application must be made in accordance with the rules adopted by the department. There is a~~
20 ~~\$17 fee for the initial application. Any subsequent application renewal must be accompanied by a \$17 application~~
21 ~~fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs~~
22 ~~of administering the program.~~

23 ~~—— (c) When an application is approved by the department, it is conclusive as to the status of an~~
24 ~~independent contractor and precludes the applicant from obtaining benefits under this chapter.~~

25 ~~—— (d) The exemption, if approved, remains in effect for 2 years following the date of the department's~~
26 ~~approval. To maintain the independent contractor status, an independent contractor shall submit a renewal~~
27 ~~application every 2 years. The renewal application and the \$17 renewal application fee must be received by the~~
28 ~~department at least 30 days before the anniversary date of the previously approved exemption.~~

29 ~~—— (e) A person who makes a false statement or misrepresentation concerning that person's status as an~~
30 ~~exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose the penalty~~

1 for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The
2 lien provisions of 39-71-506 apply to the penalty imposed by this section.

3 ~~—— (f) If the department denies the application for exemption, the applicant may, after mediation pursuant~~
4 ~~to department rules, contest the denial by petitioning the workers' compensation court.~~

5 (c) For the purposes of this subsection (3), "person" means a sole proprietor, a working member of a
6 partnership, a working member of a limited liability partnership, or a working member of a member-managed
7 limited liability company.

8 (4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its
9 employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private
10 corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or
11 managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

12 (i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering
13 the notice to the board of directors of the corporation or to the management organization of the
14 manager-managed limited liability company; or

15 (ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by
16 delivering the notice to the board of directors of the corporation or to the management organization of the
17 manager-managed limited liability company and to the insurer.

18 (b) If the employer changes plans or insurers, the employer's previous election is not effective and the
19 employer shall again serve notice to its insurer and to its board of directors or the management organization of
20 the manager-managed limited liability company if the employer elects to be bound.

21 (5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership,
22 a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the
23 purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner,
24 member, or manager to exemption from coverage.

25 (6) Each employer shall post a sign in the workplace at the locations where notices to employees are
26 normally posted, informing employees about the employer's current provision of workers' compensation
27 insurance. A workplace is any location where an employee performs any work-related act in the course of
28 employment, regardless of whether the location is temporary or permanent, and includes the place of business
29 or property of a third person while the employer has access to or control over the place of business or property
30 for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided

1 by the department, distributed through insurers or directly by the department, and posted by employers in
2 accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign
3 as provided in this subsection is subject to a \$50 fine for each citation."

4
5 **Section 10.** Section 39-71-409, MCA, is amended to read:

6 **"39-71-409. Waivers by employee invalid.** ~~No (1) An~~ agreement by an employee to waive any rights
7 under this chapter ~~for any injury to be received shall be~~ is not valid.

8 (2) (a) A person who possesses and is working under a current independent contractor exemption
9 certificate issued by the department waives all rights and benefits of the Workers' Compensation Act and
10 Occupational Disease Act of Montana unless the person elects coverage pursuant to 39-71-401(3)(b).

11 (b) A waiver by reason of an independent contractor exemption certificate is an ~~exemption~~ EXCEPTION
12 to the general prohibition of waiving the advantage of a statute enacted for a public reason as provided for in
13 1-3-204."

14
15 **Section 11.** Section 39-71-415, MCA, is amended to read:

16 **"39-71-415. Procedure for resolving disputes regarding independent contractor status.** (1) If an
17 individual, employer, or insurer has a dispute as to whether an individual is an independent contractor or an
18 employee, ~~as defined in this chapter,~~ any party may, after mediation pursuant to department rules, petition the
19 workers' compensation court for resolution of the dispute.

20 (2) If a claimant and insurer have a dispute over benefits and the dispute involves an issue of whether
21 the claimant is an independent contractor or employee, ~~as defined in this chapter, and after mediating pursuant~~
22 ~~to department rule,~~ either party may, after mediation pursuant to department rules, petition the workers'
23 compensation judge for resolution of the dispute in accordance with 39-71-2905.

24 (3) A dispute between an employer and the department involving the issue of whether a worker is an
25 independent contractor or an employee, but not involving workers' compensation benefits, must be brought
26 before the independent contractor central unit of the department for resolution. A decision of the independent
27 contractor central unit is final unless a party dissatisfied with the decision appeals by filing a petition ~~for~~
28 ~~mediation within 10 days of service of the decision. A party may petition the workers' compensation court for~~
29 ~~resolution of the dispute within 45 days of the mailing of the mediator's report~~ with the workers' compensation
30 court within 30 days of the mailing of the decision by the independent contractor central unit. An appeal from the

1 independent contractor central unit to the workers' compensation court brought pursuant to this part is a new
2 proceeding.

3 ~~(4) Notwithstanding the provisions of subsection (1), an individual may apply to the department for an~~
4 ~~exemption from the Workers' Compensation Act in accordance with 39-71-401."~~

5
6 **Section 12.** Section 39-72-102, MCA, is amended to read:

7 **"39-72-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following
8 definitions apply:

9 (1) "Beneficiary" ~~is as defined~~ has the meaning provided in 39-71-116.

10 (2) "Child" ~~is as defined~~ has the meaning provided in 39-71-116.

11 (3) "Department" means the department of labor and industry.

12 (4) "Disablement" means the event of becoming physically incapacitated by reason of an occupational
13 disease from performing work in the worker's job pool. Silicosis, when complicated by active pulmonary
14 tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are
15 synonymous with "disablement"; but ~~they~~ have no reference to "permanent partial disability".

16 (5) "Employee" ~~is as defined~~ has the meaning provided in 39-71-118.

17 (6) "Employer" ~~is as defined~~ has the meaning provided in 39-71-117.

18 (7) "Independent contractor" ~~is as defined in 39-71-120~~ means a person who is working under an
19 independent contractor exemption certificate provided for in [section 1].

20 (8) "Insurer" is as defined in 39-71-116.

21 (9) "Invalid" is as defined in 39-71-116.

22 (10) (a) "Occupational disease" means harm, damage, or death as set forth in 39-71-119(1) arising out
23 of or contracted in the course and scope of employment and caused by events occurring on more than a single
24 day or work shift.

25 (b) The term does not include a physical or mental condition arising from emotional or mental stress or
26 from a nonphysical stimulus or activity.

27 (11) "Order" is as defined in 39-71-116.

28 (12) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal
29 mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of ~~such~~
30 employment in coal mines.

(13) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (~~SiO₂~~) and characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs, causing the characteristic x-ray pattern, and by other variable clinical manifestations.

(14) "Wages" is as defined in 39-71-123.

(15) "Year" is as defined in 39-71-116."

NEW SECTION. Section 13. Repealer. Sections 39-51-604 and 39-71-120, MCA, are repealed.

NEW SECTION. Section 14. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply to [sections 1 through 3].

NEW SECTION. Section 15. Effective date -- applicability. [This act] is effective on passage and approval and applies to all applications and renewals for the independent contractor exemption certificate submitted to the department after [the effective date of this act].

- END -